(19,637.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1905.

No. 182.

THE TERRITORY OF NEW MEXICO, APPELLANT,

vs.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, THE RIO GRANDE, MEXICO AND PACIFIC RAILROAD COMPANY, AND THE SILVER CITY, DEMING AND PACIFIC RAILROAD COMPANY.

APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF NEW MEXICO.

INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., NOV. 28, 1905.

1 Be it Remembered, that heretofore, on the 4th day of December, A. D., 1902, there was filed in the office of the clerk of the Supreme Court of the Territory of New Mexico, a transcript of record, in three certain causes, which said causes were consolidated and entitled, The Atchison, Topeka and Santa Fe Railway Company, Plaintiff in Error, vs. The Territory of New Mexico No. 984; The Rio Grande, Mexico and Pacific Railroad Company, plaintiff in error vs. The Territory of New Mexico defendant in Error, No. 985; and the Silver City Deming and Pacific Railroad Company, Plaintiff in Error vs. The Territory of New Mexico defendant in Error No. 986, which said transcript of record was and is in words and figures, following towit:—

2 IN THE DISTRICT COURT, GRANT COUNTY, TERRITORY OF NEW MEXICO.

Territory of New Mexico,
Plaintiff.
vs.
The Atchison, Topeka and Santa Fe Railway Company. No. 3425.
The Rio Grande, Mexico and Pacific Railroad Company. No. 3457.
The Silver City, Deming and Pacific Railroad Company. No. 3458.

It is hereby stipulated and agreed by and between the parties to the above entitled causes that the Clerk of this Court may make and certify a single record in return to the three writs of error issued from the Supreme Court of the Territory of New Mexico to bring up the said causes for review, and that this stipulation shall be considered as a part of the record herein and shall be incorporated by the Clerk of the District Court in and for the County of Grant and Territory of New Mexico in his transcript of the record thereof.

(Signed) A. H. HARLLEE,
Attorney for Plaintiff.
(Signed) R. E. TWITCHELL,
Attorney for Defendants.

Which was and is endorsed in words and figures as follows, towit: Nos. 3425, 3457 and 3458.

In the District Court, County of Grant, Territory of New Mexico.
Territory of New Mexico,
Plaintiff.
vs.
The A., T. & S. F. Railway Company,
Defendant.
The R. G., M. & P. Railroad Company,
Defendant.
The S. C., D. & P. Railroad Company,
Defendant.
(Three Cases Consolidated.)

3 Stipulation.

Be it remembered, That three Writs of Error issued out of the Supreme Court of the Territory of New Mexico were on the 6th day of December, A. D. 1902, filed in my office, which said writs were and are in words and figures as follows, to-wit:

TERRITORY OF NEW MEXICO.

To the District Court of the 3rd Judicial District of the Territory of New Mexico, sitting within and for the County of Grant. Greeting:

Because in the record and proceedings, and in the rendition of judgment, in a certain cause lately pending before you, wherein The Territory of New Mexico was plaintiff, and The Atchison, Topeka and Santa Fe Railway Company was defendant, error has intervened, as it is said, to the damage of the said The Atchison, Topeka and Santa Fe Railway Company and we being willing that such error, if any there be, should be corrected, and speedy justice done in that behalf, do command you, if judgment therein be given, that then under your seal, distinctly and openly you send a copy of the record and proceedings aforesaid, to the Supreme Court of the Territory of New Mexico, together with this writ, so that you have the same in the said Supreme Court on the first day of the next term thereof, to be begun and held on the first Wednesday after the first Monday in January, A. D. 1903, at Santa Fe, in said Territory, in pursuance of law.

Witness The Honorable William J. Mills, Chief Justice of the Supreme Court of the Territory of New Mexico, and the seal of the said Court, this 4th day of December, A. D. 1902.

(Seal) (Signed) J. D. SENA,
Clerk.

Endorsed:
No. 984.

4 Supreme Court, Territory of New Mexico.
January Term, 1903.

The Atchison, Topeka and Santa Fe Railway Company,
Plaintiff in Error.

Error to 3d Judicial District Court.
Grant County.

Territory of New Mexico,
Defendant in Error.
Writ of Error.

H. L. WALDO,
R. E. TWITCHELL,
Attorneys for Plaintiff in Error.

Filed in my Office, December 6, 1902.

JAMES P. MITCHELL,
Clerk.
By J. A. SHIPLEY,
Deputy Clerk.

TERRITORY OF NEW MEXICO.

In the District Court of the 3d Judicial District of the Territory of New Mexico, sitting within and for the County of Grant. Greeting:

Because in the record and proceedings, and in the rendition of judgment, in a certain cause lately pending before you, wherein The Territory of New Mexico was plaintiff, and Rio Grande, Mexico and Pacific Railroad Company was defendant, error has intervened, as it is said, to the damage of the said Rio Grande, Mexico and Pacific Railroad Company, and we being willing that such error, if any there be, should be corrected, and speedy justice done in that behalf, do command you, if judgment therein be given, that then under your seal, distinctly and openly, you send a copy of the record and proceedings aforesaid, to the Supreme Court of the Territory of New Mexico, together with this writ, so that you have the same in the said Supreme Court on the first day of the next term thereof, to be begun and held on the first Wednesday after the first Monday in January, A. D. 1903, at Santa Fe, in said Territory, in pursuance of law.

Witness The Honorable William J. Mills, Chief Justice of the Supreme Court of the Territory of New Mexico, and the seal of said Court, this 4th day of December, A. D. 1902.

(Seal) (Signed) J. D. SENA.

Endorsed:
No. 985.
Supreme Court, Territory of New Mexico,
January Term, 1903.
Rio Grande Mexico and Pacific Railroad Company,
Plaintiff in Error
Error to 3d Judicial District Court,
Grant County.
Territory of New Mexico,
Defendant in Error.
Writ of Error.
H. L. WALDO,
R. E. TWITCHELL,
Attorneys for Plaintiff in Error.

Filed in my Office, December 6, 1902.
JAMES P. MITCHELL,
Clerk.
By J. A. SHIPLEY,
Deputy Clerk.

TERRITORY OF NEW MEXICO.

To the District Court of the 3d Judicial District of the Territory of New Mexico, sitting within and for the County of Grant. Greeting:

Because in the record and proceedings, and in the rendition of judgment, in a certain cause lately pending before you, wherein The Territory of New Mexico was plaintiff, and Silver City,
6 Deming and Pacific Railroad Company was defendant, error has intervened, as it is said, to the damage of the said and we being willing that such error, if any there be, should be corrected, and speedy justice done in that behalf, do command you, if judgment therein be given, that then under your seal, distinctly and openly, you send a copy of the record and proceedings aforesaid, to the Supreme Court of the Territory of New Mexico, together with this writ, so that you have the same in the said Supreme Court on the first day of the next term thereof, to be begun and held on the first Wednesday after the first Monday in January, A. D. 1903, at Santa Fe, in said Territory, in pursuance of law.

Witness the Honorable William J. Mills, Chief Justice of the Supreme Court of the Territory of New Mexico, and the seal of said Court, this 4th day of December, A. D. 1898.

(Seal) (Signed) J. D. SENA,
Clerk.

Endorsed:
No. 986.
Supreme Court, Territory of New Mexico.
January Term, 1903.
Silver City, Deming and Pacific R. R. Co.,
Plaintiff in Error.
Error to 3d Judicial District Court,
Grant County.
Territory of New Mexico,
Defendant in Error.
Writ of Error.
H. L. WALDO,
R. E. TWITCHELL,
Attorneys for Plaintiff in Error.

Filed in my Office, December 6, 1902.
JAMES P. MITCHELL,
Clerk.
By J. A. SHIPLEY,
Deputy Clerk.

7 IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE TERRITORY OF NEW MEXICO.

(Numbers Consolidated.)

Territory of New Mexico, Plaintiff,
vs.
The Atchison, Topeka and Santa Fe Railway Company. No. 3425.
The Rio Grande, Mexico and Pacific Railroad Company. No. 3457.
The Silver City, Deming and Pacific Railroad Company,
Defendants.

TRANSCRIPT OF RECORD.

Error to Grant County.

Territory of New Mexico,
County of Grant.

Be it remembered that heretofore, to-wit: On the 31st day of October, A. D. 1898; on the 22d day of March, A. D. 1899 and on the 22d day of March, A. D. 1899, there were filed in the office of the Clerk of the District Court for the County of Grant, three complaints, which complaints were in words and figures following, to-wit:

Territory of New Mexico,)
) ss.
County of Grant.)

In the District Court of the 3d Judicial District of the Territory of New Mexico, sitting in and for the Coun- of *of* Grant, for the trial of causes arising under the laws of said Territory.

8 *To the Honorable Frank W. Parker, Associate Justice of the Supreme Court of the Territory of New Mexico and Judge of the 3d Judicial District Court thereof:*

The Territory of New Mexico, by Thomas S. Heflin, her District Attorney, within and for the said County of Grant, and Arthur H. Harllee, her Special Attorney for the prosecution of this suit within said County, complains of the Atchison, Topeka and Santa Fe Railway Company, a corporation organized according to law, and doing business in the Territory of New Mexico and County of Grant, and says:—

That heretofore, to-wit, on the 8th day of November, 1895, taxes were legally levied and assessed against the Atchison, Topeka and Santa Fe Railroad Company, a corporation then doing business in said Grant County, New Mexico, for the various Territorial, County and School purposes, and also for the payment of a certain judgment rendered in this Court against the Board of County Commissioners of the County of Grant in respect of a certain contract indebtedness of said County of Grant; said taxes amounting in the aggregate to the sum of Ten Thousand, six hundred and sixty-one and 88-100 dollars ($10,661.88) that the said taxes were levied and assessed in respect of the following property situate, lying and being within said County of Grant at, and prior to the time of such levy and assessment, and then and there subject to taxation under the laws of said Territory, to-wit: the road beds, rights-of-way, franchises, rolling stock, telegraph lines, station houses, the main tracks and side-tracks of the Silver City, Deming and Pacific Railroad Company, and the Rio Grande, Mexico and Pacific Railroad Company, Corporations, situate within the limits of said County of Grant, Territory of New Mexico, and of all other property, of whatever kind, character and description, of said last two named Companies, situate and being within the limits of said County and Territory, as returned and listed for assessment in said County, prior to the said levy and assessment thereof, by the said Atchison,
9 Topeka and Santa Fe Railroad Company, lessee of said property; that the said Atchison, Topeka and Santa Fe Railroad Company as such lessee of said property, by reason of said levy and assessment of said taxes, became and was liable for the payment of said taxes so listed and assessed against it; the said Atchison, Topeka and Santa Fe Railroad Company, as aforesaid; that upon the reorganization of the said Atchison, Topeka and Santa Fe Railroad Company, to-wit, on the 12th day of December, in the year 1895, the said defendant, the Atchison, Topeka and Santa Fe Railway Company, became the successor of the said Atchison, Topeka and Santa Fe Railroad Company, and as such successor acquired all of the property whereon the said taxes were assessed, together with all other property, rights and franchises of the said Atchison, Topeka and Santa Fe Railroad Company, and as such successor became and is liable for the payment of the said taxes so levied and assessed against the said Atchison, Topeka and Santa Fe Railroad Company as aforesaid; that the said defendant, being so liable as aforesaid, has paid of the said taxes, the sum of Eight Thousand, Nine Hundred and Four and 96-100 Dollars, ($8,904.96), leaving a balance still due and unpaid, of Seventeen Hundred and Fifty-six and 92-100 Dollars ($1,756.92), which said sum the said Atchison, Topeka and Santa Fe Railroad Company and the said defendant have wholly failed and refused to pay; that of said last mentioned sum, one-half thereof became due and payable on the first day of January, 1896; and the other half thereof on the first day of July, 1896; that by force of the statute, in such case made and provided, the said taxes, so due

and unpaid, bore interest from the said times of payment thereof, at the rate of twenty-five per centum per annum.

Wherefore, by reason of the premises, an action hath accrued to the plaintiff to demand, have and receive, of, and from the defendant, the said sum of Seventeen Hundred and Fifty-six and 92-100 Dollars, together with interest on one-half of said sum, to-wit, the sum of Eight Hundred and Seventy-eight and 46-100 Dollars from the first day of January, 1896, and interest on the other half of said sum to-wit, the sum of Eight Hundred and Seventy-eight and 46-100 Dollars from the first day of July, 1896, at the rate of twenty-five per centum per annum; for all of which the plaintiff prays judgment against the defendant.

2. And whereas, also, heretofore, to-wit: on the 5th day of October in the year 1896, taxes were legally levied and assessed against the said defendant, the Atchison, Topeka and Sante Fe Railway Company, a corporation organized according to law and doing business in the Territory of New Mexico and County of Grant, for the various Territorial, County and School purposes, and also for the payment of certain judgments rendered in this Court against the Board of County Commissioners of said County of Grant, in respect to certain simple contract indebtedness of said County, said taxes amounting in the aggregate to the sum of Eleven Thousand and Fifty-six and 89-100 Dollars ($11,056.89); that the said taxes were levied and assessed in respect of the following property situate, lying and being within said County of Grant, at and prior to the time of such levy and assessment, and then and there subject to taxation under the laws of said Territory, to-wit: the road-beds, rights-of-ways, franchises, rolling stock, telegraph lines, the main tracks and side tracks of the Silver City, Deming and Pacific Railroad Company, and of the Rio Grande, Mexico and Pacific Railroad Company, Corporations, situate within the limits of said County of Grant, Territory of New Mexico, and all other property of whatever kind, character and description, of said last two named Companies, situate and being within the limits of said County and Territory, as returned and listed for assessment in said County, prior to said levy and assessment thereof, by the said defendant, lessee of said property; that the said defendant, as such lessee of said property, by reason of said levy and assessment of said taxes, became, was and is liable for the payments of said taxes, so levied and assessed against it, as aforesaid; that the said defendant, being so liable as aforesaid, has paid of said taxes the sum of Nine Thousand, One Hundred and Thirty-Nine and 6-100 Dollars ($9,139.06), leaving a balance, still due and unpaid, of Nineteen Hundred and Seventeen and 83-100 Dollars ($1,917.83), which said sum the said defendant has wholly failed and refused to pay; that of said last mentioned sum, one-half thereof became due and payable on the first day of January, 1897; and the other half thereof, on the first day of July, 1897; that by force of the statute in such case made and provided, the said taxes,

so due and unpaid, bore interest from the said times of payment thereof at the rate of twenty-five per centum per annum.

11 Wherefore, by reason of the premises, an action hath accrued to the plaintiff to demand, have and received of, and from the defendant the said sum of Nineteen Hundred and Seventeen and 83-100 Dollars, together with interest on one-half of said sum, to-wit, the sum of Nine Hundred and Fifty-eight and 91-100 Dollars, from the first day of January, 1897, and interest on the other half of said sum, to-wit, the sum of Nine Hundred and Fifty-eight and 91-100 Dollars from the first day of July, 1897, at the rate of twenty-five per centum per annum; for all of which the plaintiff prays judgment against the defendant.

3. And whereas, also, heretofore, to-wit: on the 7th day of September, in the year 1897, taxes were legally levied and assessed against the said defendant, the Atchison, Topeka and Sante Fe Railway Company, a corporation organized according to law, and doing business in the Territory of New Mexico, and County of Grant, for the various Territorial, County and School purposes, and also for the payment for the certain judgments rendered in this Court against the Board of County Commissioners of the said County of Grant, in respect to certain simple contract indebtedness of said County, said taxes amounting in the aggregate to the sum of Fourteen Thousand, Eight Hundred and Eighty-nine ($14,889.00) Dollars; that the said taxes were levied and assessed in respect to the following

12 proprety situate, lying and being in said County of Grant, at and prior to the time of such levy and assessment and then and there subject to taxation under the laws of said Territory, to-wit: the roadbed, rights-of-way, franchises, rolling stock, telegraph lines, the main tracks and side tracks of the Silver City, Deming and Pacific Railroad Company and of the Rio Grande, Mexico and Pacific Railroad Company, Corporations, situate within the limits of said County of Grant, Territory of New Mexico, and all other property of whatever kind, character and description, of said last two named Companies, situate and being within the limits of said County and Territory, as returned and listed for assessment in said County, prior to said levy and assessment thereof, by the said defendant, lessee of said property, by reason of said levy and assessment of said taxes, became, was and is liable for the payment of said taxes, so levied and assessed against it, as aforesaid; that the said defendant, being so liable as aforesaid, has paid of said taxes the sum of Nine Thousand, Nine Hundred and Seven and 26-100 Dollars ($9,907.26), leaving a balance, still due and unpaid, of Four Thousand, Nine Hundred and Eighty-one and 74-100 Dollars ($4,981.74); which said sum the said defendant has wholly failed and refused to pay; that of said last mentioned sum one-half thereof became due and payable on the first day of January, and the other half thereof on the first day of July, 1898; that by force of the statute, in such case made and provided, the said taxes, still due and unpaid, bore interest

from said times of payment thereof at the rate of twenty-five per centum per annum.

Wherefore, by reason of the premises, an action hath accrued to the plaintiff to demand, have and receive of, and from the defendant, the said sum of four thousand, nine hundred and eighty-one and 74-100 dollars, together with interest on one-half of said sum to-wit, the sum of two thousand, four hundred and ninety and 87-100 Dollars, from the first day of January, 1898, and interest on
13 the other half of said sum, to-wit, the sum of two thousand, four hundred and ninety and 87-100 Dollars, from the first day of July, 1898, at the rate of twenty-five per centum per annum; for all of which plaintiff prays judgment against the defendant, together with the costs of this action.

THOS. S. HEFLIN,
District Attorney in and for the County of Grant,
Third Judicial District, Territory of New Mex.
ARTHUR H. HARLLEE,
Special Attorney for Plaintiff.

Address: Silver City, N. M.

Said Complaint is endorsed as follows, to-wit:

No. 3425.
In Third Judicial District Court, Grant County.
Territory of New Mexico
vs.
Atchison, Topeka and Santa Fe Railway Company.
Complaint—Original..
THOS. S. HEFLIN,
Dist. Atty. in and for Grant County, N. M.
ARTHUR H. HARLEE,
Silver City, N. M.
Attorneys for Plaintiff.

Filed in my Office, October 31, 1898.
J. P. MITCHELL, Clerk.
By J. A. SHIPLEY, Deputy.

Territory of New Mexico,)
County of Santa Fe.)ss.

In the District Court of the Third Judicial District of the Territory of New Mexico, within and for the County of Grant.

To the Honorable Frank W. Parker, Associate Justice of the
14 *Supreme Court of the Territory of New Mexico, and Presiding Judge of the 3d Judicial District Court thereof:*

The Territory of New Mexico, Plaintiff, by Thomas S. Heflin, her District Attorney, within and for said County of Grant, and Arthur

H. Harllee, her Special Attorney for the prosecution of this suit, within said County, complains of the Rio Grande, Mexico and Pacific Railroad Company, a corporation organized according to law, and doing business in the Territory of New Mexico and County of Grant, Defendant, and says:

1. That heretofore, to-wit, on the eighth day of November, A. D. 1895, taxes were legally levied and assessed in said County of Grant against the said defendant, the Rio Grande, Mexico and Pacific Railroad Company, a corporation then doing business in said Grant County, New Mexico, for the various Territorial, County and School purposes, and also for the payment of a certain judgment rendered in this Court against the Board of County Commissioners of the said County of Grant, in respect of a certain contract indebtedness of said County of Grant; that said taxes amounted in the aggregate to the sum of Two Thousand, Eight Hundred and Fifty-four and 88-100 Dollars; that said taxes were levied and assessed in respect of the following property, situate, lying and being within said County of Grant, at, and prior to the time of such levy and assessment, and then and there subject to taxation under the laws of said Territory, to-wit: the road beds, rights-of-way, franchises, rolling stock, telegraph lines, station houses, the main tracks and side tracks of said corporation, defendant, situate within the limits of said County of Grant, together with all other property of whatever kind, character and description, of the said defendant, situate and being within the limits of said County and Territory; that by reason of said levy and assessment, the defendant became and is liable for the payment of said taxes so levied and assessed against it as aforesaid; that of said taxes so levied and assessed against the said defendant as aforesaid; the said defendant has paid the sum of Two Thousand Two
15 Hundred and Seventy-three and 97-100 Dollars, leaving a balance still due and unpaid of Five Hundred and Eighty and 91-100 dolars, which said sum the said defendant has heretofore wholly failed and refused to pay, and still refuses to pay; that of said last mentioned sum, one-half thereof became due and payable on the first day of January, 1896; and the other half thereof on the first day of July, 1896; that by force of the statute in such case made and provided, the said taxes, so due and unpaid, bore interest from the said time of payment thereof at the rate of twenty-five per centum per annum.

Wherefore, by reason of the premises, an action hath accrued to the plaintiff, the said Territory of New Mexico, to demand, have and receive, of, and from the said defendant the said sum of Five Hundred and Eighty and 91-100 Dollars, together with interest upon one-half of said sum, to-wit, the sum of Two Hundred and Ninety and 45-100 Dollars from the first day of January, 1896, and interest on the other half of said sum, to-wit, the sum of Two Hundred and Ninety and 45-100 Dollars from the first day of July, 1896, at the rate of twenty-five per centum per annum; for all of which plaintiff prays judgment against the defendant.

2. And whereas, heretofore, to-wit, On the fifth day of October, 1896, taxes were legally levied and assessed, in said County of Grant, against the said defendant, the Rio Grande, Mexico and Pacific Railroad Company, for the various Territorial, County and School purposes, and also for the payment of certain judgments rendered in this Court against the Board of County *of* Commissioners in respect of certain simple contract indebtedness of said County of Grant; that said taxes amounted in the aggregate to the sum of Two Thousand, Seven Hundred and Ninety-five and 74-100 Dollars; that the said taxes were levied and assessed in respect of the following property, situate, lying and being in said County of Grant, at and prior to the time of such levy and assessment, and then and there subject to taxation under the laws of said Territory, to-wit: the road beds,
16 rights-of-way, franchises, rolling stock, telegraph lines, the main tracks and side tracks, of said defendant Company, together with all other property of whatever kind, character and description, of the said defendant, situate and being within the limits of said County and Territory; that by reason of said levy and assessment the said defendant became and is liable for the payment of said taxes so levied and assessed against the said defendant as aforesaid; that — the said taxes so levied and assessed against the said defendant as aforesaid, the said defendant has paid the sum of Two Thousand, Three Hundred and Thirty-eight and 26-100 Dollars, leaving a balance still due and unpaid of Four Hundred and Fifty-seven and 48-100 Dollars, which said sum the said defendant has hitherto wholly failed and refused to pay and still refuses so to pay; that of said last mentioned sum one-half thereof became due and payable on the first day of January, 1897; and the other half thereof on the first day of July, 1897; that by the force of the statute in such case made and provided, the said taxes, so due and unpaid, bore interest from the said times of payment thereof, at the rate of twenty-five per centum per annum.

Wherefore, by reason of the premises, an action hath accrued to the said plaintiff, the Territory of New Mexico, to demand, have and receive of, and from the said defendant, the said sum of Four Hundred and Fifty-seven and 48-100 Dollars, together with interest upon one-half of said sum, to-wit, the sum of Two Hundred and Twenty-eight and 74-100 Dollars from the first day of January, 1897; and interest on the other half of said sum, to-wit, the sum of Two Hundred and Twenty-eight and 74-100 Dollars, from the first day of July, 1897, at the rate of twenty-five per centum per annum; for all of which the plaintiff prays judgment against the defendant.

3. And whereas also, heretofore, to-wit, on the seventh day of September, 1897, taxes were legally levied and assessed in said Grant County, against the said defendant, the Rio Grande, Mexico
17 and Pacific Railroad Company, for the various Territorial, County and School purposes, and also for the payment of certain judgments rendered in this Court against the Board of County Commissioners of the said County of Grant, in respect to

certain contract indebtedness of said Grant County, said taxes amounting in the aggregate to the sum of Three Thousand, Eight Hundred and Twenty-nine and 10-100 Dollars; that said taxes were levied and assessed in respect of the following property, situate, lying and being in said County of Grant, at, and prior to the time of such levy and assessment, and then and there subject to taxation under the laws of said Territory, to-wit:—the road beds, rights of way, franchises, rolling stock, telegraph lines, the main track and side tracks of the said defendant Company, together with all other property of whatever kind, character and description of the said defendant, situate and being within the limits of said County and Territory; that by reason of said levy and assessment the said defendant became and is liable for the payment of said taxes so levied and assessed against said defendant as aforesaid; that of said taxes so levied and assessed against said defendant as aforesaid, the said defendant has paid the sum of Three Thousand, One Hundred and Ninety-three and 06-100 Dollars, leaving a balance still due and unpaid of Six Hundred and Thirty-six and 04-100 Dollars, which said sum the said defendant has hitherto wholly failed and refused to pay and still refuses so to pay; that of said last mentioned sum, one-half thereof became due and payable on the first day of January, 1898; and the other half thereof on the first day of July, 1898; that by force of the statute in such case made and provided, the said taxes still due and unpaid, bore interest from the said times of payment thereof at the rate of twenty-five per centum per annum.

Wherefore, by reason of the premises, an action hath accrued to the plaintiff to demand, have and receive of, and from the said defendant, the said sum of Six Hundred and Thirty-six and
18 04-100 Dollars, together with interest on one-half of said sum, to-wit, the sum of Three Hundred and Eighteen and 02-100 Dollars from the first day of January, 1898; and interest on the other half of said sum, to-wit, the sum of Three Hundred and Eighteen and 02-100 Dollars, from the first day of July, 1898, at the rate of twenty-five per centum per annum; for all of which plaintiff prays judgment against the defendant together with the costs of this action.

THOS. S. HEFLIN,
District Attorney in and for the County of Grant, Third Judicial District, Territory of New Mexico,
Silver City, N. M.
ARTHUR H. HARLEE,
Special Attorney for Plaintiff.
Silver City, N. M.

Said Complaint is endorsed as follows, to-wit:—

No. 3457.

In Third Judicial District Court, Grant County.

Territory of New Mexico

vs.

The Rio Grande, Mexico and Pacific Railroad Company.

Complaint.

Filed in my office March 22d, 1899.

J. P. MITCHELL, Clerk.

By J. A. SHIPLEY, Deputy.

T. S. Heflin, Attorney and A. H. Harllee, Special Attorney for Plaintiff.

Territory of New Mexico,)
) ss.
County of Grant,)

In the District Court of the Third Judicial District of the Territory of New Mexico, within and for the County of Grant.

To the Honorable Frank W. Parker, Associate Justice of the
19 *Supreme Court of the Territory of New Mexico and Presiding Judge of the Third Judicial District Court thereof:*

The Territory of New Mexico, plaintiff, by Thomas S. Heflin, her District Attorney, within and for said County of Grant, and Arthur H. Harllee, her Special Attorney for the prosecution of this suit, within said County, complains of the Silver City, Deming and Pacific Railroad Company, a corporation organized according to law, and doing business in the Territory of New Mexico and County of Grant, defendant, and says:—

1. That heretofore, to-wit, on the eighth day of November, A. D. 1895, taxes were legally levied and assessed against the said defendant, the Silver City, Deming and Pacific Railroad Company, a corporation then doing business in said Grant County, New Mexico, for the various Territorial, County and School purposes, and also for the payment of a certain judgment rendered in this Court against the Board of County Commissioners of the said Count- of Grant, in respect of a certain contract indebtedness of said County of Grant; that said taxes amounted in the aggregate to the sum of Seven Thousand, Eight Hundred and seven Dollars; that said taxes were levied and assessed in respect of the following property, situate, lying and being within said County of Grant, at and prior to the time of such levy and assessment, and then and there subject to taxation under the laws of said Territory, to-wit: the road beds, rights-of-way, franchises, rolling stock, telegraph lines, station houses, the main tracks and side tracks of said corporation, defendant, situate within the limits of said County of Grant, together with all property, of whatever kind, character and description, of the

said defendant, situate and being within the limits of said County and Territory; that by reason of said levy and assessment, the defendant became and is liable for the payment of said taxes so levied and assessed against it as aforesaid; that of said taxes so levied and assessed against the said defendant as aforesaid; the said defendant has paid the sum of Six Thousand Six Hundred and Thirty and 99-100 Dollars, leaving a balance still due and unpaid of Eleven Hundred and Seven six and 01-100 Dollars, which said sum the said defendant has heretofore wholly failed and refused to pay, and still refuses to pay; that of said last mentioned sum, one-half thereof became due and payable on the first day of January, 1896; and the other half thereof on the first day of July, 1896; that by force of the statute in such case made and provided, the said taxes, so due and unpaid, bore interest from the said times of payment thereof at the rate of twenty-five per centum per annum.

Wherefore, by reason of the premises, an action hath accrued to the plaintiff, the said Territory of New Mexico, to demand, have and receive, of and from the said defendant the said sum of Eleven Hundred and Seven Six and 01-100 Dollars, together with the interest upon one-half of said sum, to-wit, the sum of Five Hundred and Eighty-eight Dollars from the first day of January, 1896; and interest on the other half of said sum, to-wit: the sum of Five Hundred and Eighty-eight Dollars from the first day of July, 1896, at the rate of twenty-five per centum per annum; for all of which plaintiff prays judgment against the defendant.

2. And Whereas, heretofore, to-wit, on the Fifth day of October, 1896, taxes were legally levied and assessed against the said defendant, the Silver City, Deming and Pacific Railroad Company, for the various Territorial, County and School purposes, and also for the payment of certain judgments rendered in this Court against the Board of County Commissioners in respect of certain simple contract indebtedness of said County of Grant; that said taxes amounted in the aggregate to the sum of Eight Thousand Two Hundred and Sixty-one and 15-100 Dollars; that the said taxes were levied and assessed in respect of the following property situate, lying and being in said County of Grant, at and prior to the time of such levy and assessment, and then and there subject to taxation, under the laws of said Territory, to-wit, the road beds, rights-of-way, franchises, rolling stock, telegraph lines, the main tracks, and side tracks, of said defendant Company, together with all other property of whatever kind, character and description, of the said defendant, situate, and being within the limits of said County and Territory; that by reason of said levy and assessment the said defendant became and is liable for the payment of said taxes so levied and assessed against it as aforesaid; that of taxes so levied and assessed against the said defendant as aforesaid, the said defendant has paid the sum of Six Thousand Eight Hundred and 80-100 Dollars, leaving a balance still due and unpaid of Fourteen Hundred and Sixty

and 35-100 Dollars, which said sum the said defendant has hitherto wholly failed and refused to pay and still refuses so to pay; that of said last mentioned sum one-half thereof became due and payable on the first day of January, 1897, and the other half thereof on the first day of July, 1897, that by force of the statute in such case made and provided the said taxes, so due and unpaid, bore interest from the said times of payment thereof at the rate of twenty-five per centum per annum.

Wherefore by reason of the premises, an action hath accrued to the said plaintiff the Territory of New Mexico, to demand, have and receive of, and from the said defendant, the said sum of Fourteen Hundred and Sixty and 35-100 Dollars, together with interest upon half of said sum, to-wit, the sum of Seven Hundred and Thirty and 17-100 Dollars from the first day of January, 1897, and interest on the other half of said sum, to-wit, the sum of Seven Hundred and Thirty and 17-100 Dollars, from the first day of July, 1897, at the rate of twenty-five per centum per annum; for all of which the plaintiff prays judgment against the defendant.

3. And whereas also, heretofore, to-wit, on the Seventh day of September, 1897, taxes were legally levied and assessed in said Grant County, against the said defendant, the Silver City, Deming and Pacific Railroad Company for the various Territorial, County and School purposes, and also for the payment of certain judg-
22 ments rendered in this Court against the Board of County Commissioners of the said County of Grant, in respect to certain contract indebtedness of said Grant County, said taxes amounting in the aggregate to the sum of Eleven Thousand and Fifty-nine and 90-100 Dollars; that said taxes were levied and assessed in respect of the following property situate and being in the said County of Grant at and prior to the time of such levy and assessment, and then and there subject to taxation under the laws of said Territory, to-wit: the road beds, rights-of-way, franchises, rolling stock, telegraph lines, the main track and side tracks of sand defendant Company, together with all other property of whatever kind, character and description of the said defendant situate and being within the limits of said County and Territory; that by reason of said levy and assessment the said defendant became and is liable for the payment of said taxes so levied and assessed against it as aforesaid; that of, said taxes so levied and assessed against said defendant as aforesaid, the said defendant has paid the sum of Six Thousand Seven Hundred and Fourteen and 21-100 Dollars, leaving a balance still due and unpaid of Four Thousand Three Hundred and Forty-five and 71-100 dollars, which said sum the said defendant has hitherto wholly failed and refused to pay and still refuses to so pay; that of said last mentioned sum, one-half thereof became due and payable on the first day of January, 1898; and the other half thereof on the first day of July, 1898; that by force of the statute in such case made and provided, the said taxes still due and unpaid, bore interest

from the said times of payment thereof at the rate of twenty-five per cent per annum.

Wherefore by reason of the premises an action hath accrued to the plaintiff to demand, have and receive of, and from the said defendant, the said sum of Four Thousand Three Hundred and Forty-five and 70-100 Dollars, together with interest on one-half of said sum, to-wit, the sum of Two Thousand One Hundred and Seventy-two and 85-100 Dollars, from the first day of January, 1898,
23 and interest on the other half of said sum, to-wit, the sum of Two Thousand One Hundred and Seventy-two and 85-100 Dollars from the first day of July, 1898, at the rate of twenty-five per centum per annum; for all of which plaintiff prays judgment against the defendant, together with the costs of this action.

THOS. S. HEFLIN,
District Attorney in and for the County of Grant,
Third Judicial District, Territory of New Mexico,
Silver City, N. M.
ARTHUR H. HARLEE,
Special Attorney for Plaintiff,
Silver City, N. M.

Said Complaint is endorsed as follows, to-wit:

No. 3458.

In the Third Judicial District Court, Grant County.
Territory of New Mexico,
vs.
The Silver City, Deming and Pacific Railroad Company.
Complaint.
Filed in my office March 22nd, 1899.
J. P. MITCHELL, Clerk.
By J. A. Shipley, Deputy.
T. S. Heflin, Attorney and A. H. Harllee, Special Attorney for Plaintiff.

And Be it Further Remembered, That on said thirty-first day of October, A. D. 1898, there was issued from the office of the Clerk of said Court, a Summons, which said summons is in words and figures as follows, to-wit:

SUMMONS.

In the District Court of the Third Judicial District of the Territory of New Mexico, in and for the County of Grant.

24 Territory of New Mexico,
Plaintiff,
No. 3425 vs. Civil.
Atchison, Topeka and Santa Fe
Railway Company,
Defendant.

The Territory of New Mexico.

To the Atchison, Topeka and Santa Fe Railway Company, Greeting:

You are hereby commanded to be and appear before the District Court of the Third Judicial District of the Territory of New Mexico, in and for the County of Grant, that being the county in which the complaint herein is filed, within twenty days after the service of this summons upon you, if you are served in any county within this Judicial District embracing the counties of Grant, Dona Ana, and Sierra; otherwise within thirty days after service; then and there to answer the complaint filed herein. And you are hereby notified that unless you so appear and answer, the plaintiff will apply to the court for the relief demanded in the complaint.

Witness the Hon. Frank W. Parker, Associate Justice of the Supreme Court of the Territory of New Mexico, and Presiding Judge of the Third Judicial District Court thereof, and the seal of said District Court at Silver City, New Mexico, this 31st day of October, A. D. 1898.

(Seal)

J. P. MITCHELL,
Clerk.
By J. A. SHIPLEY,
Deputy.

(Endorsed.)

25 This is an action brought by the Territory of New Mexico, plaintiff, against the Atchison, Topeka and Santa Fe Railway Company, for the recovery of taxes assessed against defendant in the County of Grant, in the years 1895, 1896, and 1897, and alleged to be due and delinquent as follows, to-wit: for the year 1895, the sum of $1,756.92; for the year 1896, the sum of $1,917.83; and for the year 1897, the sum of $4,981.74; for all of which plaintiff asks for judgment, together with interest on said sums, respect-

ively, from the periods of delinquency thereof, at the rate of 25 per cent per annum, and costs of suit.

(Seal)

J. P. MITCHELL,
Clerk.
By J. A. SHIPLEY,
Deputy.

Said summons is endorsed as follows, to-wit:

No. 3425.

TERRITORY OF NEW MEXICO.

Third Judicial District Court, County of Grant.

Territory of New Mexico,

vs.

Atchison, Topeka and Santa Fe Railway Company.

SUMMONS.

Original.

Thos. S. Heflin and Arthur H. Harllee,
Silver City, N. M.
Attorneys for Plaintiff.

And Be It Further Remembered, that afterwards, to-wit, on the 21st day of November, 1898, there was filed in the office of the Clerk of said Court, the original of said summons, to which is attached the return of the Sheriff, said return being in words and figures as folows, to-wit:

Territory of New Mexico,)
) ss. No. 3425.
County of Grant.)

I, William G. McAfee, Sheriff of Grant County, New Mex-
26 ico, do hereby certify that I received the within writ on the 31st day of October, A. D. 1898, and that I served the same, together with a copy of the complaint filed in said cause, on the 31st day of October, A. D. 1898, at Silver City, N. M., by then and there delivering to H. M. Stecker, Agent of the Atchison, Topeka and Santa Fe Railway Company a true copy of the within writ and a copy of the complant filed in said cause.

Service $1.00
Return 50

$1.50

W. G. McAFEE,
Sheriff of Grant County, N. M.

And Be It Further Remembered, that afterwards, to-wit, on the 22nd day of November, 1898, there was filed in the office of the Clerk of said Court, a Motion for Judgment, which said motions is in words and figures as follows, to-wit:

In the District Court of the Third Judicial District of the Territory of New Mexico, within and for the County of Grant.

Territory of New Mexico,
Plaintiff.
vs. No. 3425.
Atchison, Topeka and Santa Fe
Railway Company,
Defendant.

Comes now the said plaintiff, the Territory of New Mexico, by Thomas S. Heflin, her District Attorney, and Arthur H. Harllee, Special Attorney for plaintiff herein, and move the Court for judgment against defendant as prayed for in the complaint herein upon the ground that said defendant has failed to appear and plead to complaint herein within the time required by law.

THOMAS S. HEFLIN,
District Attorney,
ARTHUR H. HARLLEE,
Attorneys for Plaintiff.

27 Said motion for Judgment is endorsed as follows, to-wit:

No. 3425.

Territory of New Mexico
vs.
A. T. & S. F. Railway Co.
Motion for Judgment.
Filed in my office November 22nd, 1898.
JAMES P. MITCHELL, Clerk.

THOS. S. HEFLIN,
District Attorney.
A. H. HARLLEE,
Attorneys for Plaintiff.

And Be It Further Remembered, that afterwards, to-wit, at a regular term of said Court, begun and held within the said County of Grant, at the Court House in said County on the 21st day of November, 1898, and on the third day of said term, the same being the 23d day of November, 1898, the following among other proceedings were had and entered of record, to-wit:

Territory of New Mexico,)
vs.) Civil. 3425.
Atchison, Topeka and Santa Fe R. R. Co.)

This cause coming on to be heard on this day upon the motion for judgment by default heretofore filed herein by plaintiff, and the Court having heard said motion and the arguments of counsel and being fully advised in the premises, doth overrule the same.

It is therefore ordered by the Court that plaintiff's motion for judgment by default herein be and the same is hereby overruled.

And now upon application, leave is granted the said defendant to file its answer herein as of November 21st, 1898, which is accordingly done.

28 And Be It Further Remembered, that afterwards, to-wit, as of the 21st day of November, 1898, there was filed in the office of the Clerk of said Court, an Answer, which said Answer is in words and figures as follows, to-wit:—

In the District Court, County of Grant, Territory of New Mexico.

Territory of New Mexico,
Plaintiff.
vs. Number 3425.
The Atchison, Topeka and Santa Fe
Railway Company,
Defendant.

ANSWER.

Now comes the said The Atchison, Topeka and Santa Fe Railway Company, Defendant in the above entitled cause by R. E. Twitchell, Esquire, its attorney, and for answer to the complaint of the plaintiff, the Territory of New Mexico, says:—

It denies that on the 8th day of November, 1895, taxes were legally levied and assessed against the Atchison, Topeka and Santa Fe Railroad Company for the various Territorial, County and School purposes and as well for the payment of a certain judgment rendered in the above entitled Court against the Board of County Commissioners of the County of Grant in respect of a certain contract indebtedness of said county; said taxes amounting in the aggregate to the sum of Ten Thousand, Six Hundred and Sixty-one and 88-100 Dollars; and denies that the said taxes were levied and assessed in respect of the following property, situate, lying and being within said County of Grant at and prior to the time of such levy and assessment, and denies that the same was then and there subject to taxation under the laws of said Territory, to-wit, as follows: the road beds, rights of way, franchises, rolling stock, telegraph lines, station houses, the main tracks and side tracks of the Silver City, Deming

and Pacific Railroad Company, and the Rio Grande, Mexico
29 and Pacific Railroad Company, situate within the limits of the said County of Grant, and of all other property, of whatever kind, character and description, of said last mentioned companies, situate and being within the limits of said County and Territory, and denies that the same or any part thereof was returned and listed for assessment in said County, prior to the said alleged and pretended levy and assessment by the said defendant as lessee of said property, and denies that the said defendant by reason of any such pretended levy and assessment became and was liable for the payment of said taxes so alleged to have been listed and assessed against it; and further denies that upon any such pretended levy and assessment became and was liable for the payment of said taxes so alleged to have been listed and assessed against it; and further denies that upon any re-organization of the said Atchison, Topeka and Santa Fe Railroad Company, on the 12th day of December, 1895, or at any other day or date, this defendant became the successor of the said Atchison, Topeka and Santa Fe Railroad Company and as such acquired all of the property whereon the said taxes were alleged and pretended to have been assessed together with all of the property rights and franchises of the said Atchison, Topeka and Santa Fe Railroad Company, and denies that as such alleged successor this defendant became and is liable for the payment of the said alleged and pretended taxes so alleged and pretended to have been levied and assessed against the said Atchison, Topeka and Santa Fe Railroad Company.

And this defendant further denies that it has paid of the said pretended taxes any sum whatever or that there is due and owing from this defendant on account of said alleged and pretended levy and assessment to the said plaintiff any sum whatever, whether on account of the said pretended taxes or interest thereon.

And the said defendant further denies that on the 5th day of October, 1896, taxes were legally levied and assessed against this defendant, for the various Territorial, County and School pur-
30 poses, as well as also for the payment of certain judgments rendered in the above entitled Court against the Board of County Commissioners of the County of Grant in respect to certain simple contract indebtedness of said County and denies that said taxes amounted in the aggregate to the sum of Eleven Thousand and fifty-six and 89-100 dollars, or any other amount and denies that the said alleged and pretended taxes were levied and assessed in respect of the following property situate, lying and being within the County of Grant and Territory of New Mexico, at, and prior to the time of such alleged and pretended levy and assessment and then and there subject to taxation under the laws of the Territory of New Mexico, to-wit: the road beds, rights of way, franchises, rolling stock, telegraph lines, the main tracks and side tracks of the Silver City, Deming and Pacific Railroad Company and the Rio Grande, Mexico and Pacific Railroad Company, and all other property of

whatever kind, character and description of the said last named companies situate within the limits of said County and Territory, and denies that the same or any part thereof was returned and listed for assessment by the said defendant as lessee of said property and denies that the said defendant by reason of any such pretended levy and assessment became liable for the payment of said taxes so alleged to have been listed, levied and assessed against it.

And this defendant denies that there is due and owing from it to the Territory of New Mexico, the plaintiff herein, for and on account of said pretended and alleged assessment and levy for said year, the sum of One Thousand Nine Hundred and Seventeen Dollars and Eighty-three Cents, or any other sum, and denies that of the said alleged taxes, to-wit, One Thousand Nine Hundred and Seventeen and 83-100 Dollars, one-half thereof became due and payable on the first day of January, 1897, and the other half thereof on the first day of July, 1897, or that the same or any part thereof are due and unpaid. And further denies that the said alleged and pretended taxes bore interest from the said alleged times of payment
31 thereof at the rate of twenty-five per cent per annum and denies that any interest in any amount on any account is due, owing and unpaid to the plaintiff herein.

And the said defendant further denies that on the 7th day of September, 1897, taxes were legally levied and assessed against it for the various Territorial, County and School purposes, as well as also for the payment of the certain judgments rendered in the above entitled Court against the Board of County Commissioners of the said County of Grant in respect to certain simple contract indebtedness of said County, said alleged and pretended taxes amounting in the aggregate to the sum of Fourteen Thousand Eight Hundred and Eighty-nine Dollars, and denies that the said pretended taxes were levied and assessed in respect to the following property situate, lying and being in said County of Grant, at and prior to the time of such pretended assessment and levy and then and there subject to taxation under the laws of this Territory, to-wit: the road beds, rights of way, franchises, rolling stock, telegraph lines, the main tracks and side tracks of the Silver City, Deming and Pacific Railroad Company and of the Rio Grande, Mexico and Pacific Railroad Company and all other property of whatever kind, character and description of said last mentioned companies, situate, lying and being within the limits of said County and Territory, and denies that the same were returned and listed for assessment in said County prior to said alleged and pretended assessment and levy by this defendant as lessee thereof; and denies that this defendant as such alleged lessee, by reason of said alleged and pretended assessment became, was and is liable for the payment of said taxes so pretended to have been levied and assessed against it.

And this defendant denies that there is due, owing and unpaid to the plaintiff herein for and on account of said pretended levy and assessment for said year, the sum of Four Thousand Nine Hundred

and Eighty-one and 74-100 Dollars, or any other sum whatever and further denies that of said last mentioned sum one-half
32 thereof became due and payable on the first day of January, 1898, and the other half thereof on the first day of July, 1898, or at any other time, and denies that the same or any part thereof is due, owing and unpaid; and further denies that the said alleged and pretended taxes bore interest from the said alleged times of payment thereof at the rate of twenty-five per cent. per annum and denies that any interest in any amount, on any account, is due, owing and unpaid to the plaintiff herein.

And the said defendant further denies that it is the lessee of the said Silver City, Deming and Pacific Railroad Company, or is the lessee of the said Rio Grande, Mexico and Pacific Railroad Company, and denies that as such alleged and pretended lessee it is liable for the alleged and pretended taxes and interest so as aforesaid attempted and pretended to be charged against it.

And the said defendant, having fully answered the said complaint, prays to be hence dismissed with its costs.

R. E. TWITCHELL,
Attorney for Defendant
East Las Vegas, N. M.

Said Answer is endorsed as follows, to-wit:

No. 3425.

In the District Court, County of Grant, New Mexico.

Territory of New Mexico,
Plaintiff.

vs.

A. T. & S. F. Railway Company,
Defendant.

Answer.

Received November 20, 1898.

Filed in my office November 21, 1898.

JAMES P. MITCHELL,
Clerk.

R. E. TWITCHELL,
East Las Vegas, N. M.,
Attorney for Defendant.

33 And Be It Further Remembered, that afterwards, to-wit, at a regular term of said Court, begun and held within the said County of Grant, at the Court House in said County, on the 3rd day of April, 1899, and on the first day of said term, the same being the 3rd day of April, 1899, the following among other proceedings were had and entered of record, to-wit:

Territory of New Mexico,)
Plaintiff.)
vs.) No. 3425. Civil.
Atchison, Topeka and Santa Fe)
Railway Company, Defendant.)

Come now the parties hereto by Messrs. Barnes & Harllee and R. E. Twitchell, Esq., their respective attorneys, and waive a trial by jury herein and consent to submit this cause to the Court for trial.

Territory of New Mexico,)
Plaintiff.)
vs.) No. 3457. Civil
The Atchison, Topeka and Santa)
Fe Railway Company, Defendant.)

Comes now the plaintiff herein by T. S. Heflin, Esq., and A. H. Harllee, Esq., her attorneys, and comes the said defendant by R. E. Twitchell, Esq., its attorney, and waive trial by jury herein and consent to submit this cause to the Court for trial.

Territory of New Mexico,)
Plaintiff.)
vs.) No. 3458. Civil.
The Atchison, Topeka & Santa Fe)
Railway Company, Defendant.)

Now comes the plaintiff herein by T. S. Heflin, Esq., and
34 A. H. Harllee, Esq., her attorneys, and comes the said defendant by R. E. Twitchell, Esq., its attorney, and waive a trial by jury herein and consent to submit this cause to the Court for trial.

And be it further remembered, that afterwards, to-wit, at said regular term of Court aforesaid, and on the 4th day of April, 1899, the same being the second day of said term, the following among other proceedings were had and entered of record, to-wit:

Territory of New Mexico,)
Plaintiff.)
vs.) No. 3425. Civil.
Atchison Topeka and Santa Fe Railway)
Company, Defendant,)

Comes now the plaintiff herein by R. P. Barnes, Esq., her attorney, and comes the said defendant by R. E. Twitchell, Esq., its attorney, and waive a trial by jury herein and consent to submit this cause to the Court for trial to find and determine the issues herein.

And now upon applicatiin of said defendant, by its said attorney and by consent of said plaintiff, the said defendant is granted leave

by the court to amend its answer heretofore filed herein by interlineation, for the purpose of correcting clerical errors therein.

And be it further remembered, that afterwards, to-wit, on the 4th day of April, 1899, there was filed in the office of the Clerk of said Court, two Answers, which said Answers are in words and figures as follows, to-wit:

In the District Court, Grant County, Territory of New Mexico.

Territory of New Mexico, Plaintiff,	)	
vs.	)	
The Rio Grande, Mexico and Pacific Railroad Company,	)	No. 3457.
Defendant.	)	

35 ANSWER.

Now comes said The Rio Grande, Mexico and Pacific Railroad Company, defendant in the above entitled cause, by R. E. Twitchell, Esq., its attorney, and for answer to the complaint of plaintiff, the Territory of New Mexico, says:

It denies that heretofore, to-wit, on the 8th day of November, A. D. 1895, taxes were legally levied and assessed in the said County of Grant against the said defendant for the various Territorial, County and School purposes as well also for the payment of a certain judgment rendered in this Court against the Board of County Commissioners of the said County of Grant in respect to a certain contract indebtedness of said county of Grant; said taxes amounting in the aggregate to the sum of Two Thousand, Eight Hundred, Fifty-Four and 88-100 Dollars ($2,854.88); and

Denies that said taxes were levied and assessed in respect to the following property situate, lying and being within the said County of Grant at and prior to the time of said levy and assessment; and

Denies that the same were then and there subject to taxation under the laws of said Territory, to-wit: The road beds, rights-of-way, franchises, rolling stock, telegraph lines, station houses, main tracks and side tracks of this defendant situate within the limits of the said county of Grant, together with all other property of whatever kind, character and description belonging to this defendant situate and being within the limits of said County of Grant and Territory of New Mexico; and

Denies that the same or any part thereof was returned and listed for assessment in said County prior to the said alleged and pretended assessment; and

Denies that this defendant by reason of such pretended levy and assessment became and was liable for the payment of said taxes so alleged to have been listed and assessed against it.

36 This defendant further denies that it has paid of the said pretended tax any sum whatever, or that there is due and

owing from this defendant on account of such alleged and pretended assessment to the said plaintiff any sum whatever, whether on account of the said pretended tax or interest thereon.

This defendant further denies that on the 5th day of October, A. D. 1896, taxes were legally levied and assessed against this defendant for the various Territorial, County and School purposes as well as also for the payment of certain judgments rendered in the above entitled Court against the Board of County Commissioners of the County of Grant in respect to certain simple contract indebtedness of said County; and

Denies that said taxes amounted in the aggregate to the sum of ($2,795.74) Two Thousand, Seven Hundred, Ninety-Five and 74-100 Dollars, or any other sum, and

Denies that the said alleged and pretended taxes were levied and assessed in respect to the following property situate and lying within the County of Grant and Territory of New Mexico at and prior to the time of such alleged and pretended levy and assessment, and then and there subject to taxation under the laws of the Territory of New Mexico, to-wit: The roadbeds, rights-of-way, franchises, rolling stock, telegraph lines, the main tracks and sidetracks of this defendant, together with all other property of whatever kind, character and description belonging to this defendant situate and being within the limits of said County and Territory; and

Denies that the same or any part thereof was returned and listed for assessment in said County prior to the said alleged and pretended assessment by the said defendant; and

Denies that the said defendant by reason of any such pretended levy and assessment became and was liable for the payment of said tax so pretended to have been listed and assessed against it.

This defendant further denies that there is due and owing
37 from it to the Territory of New Mexico, the plaintiff herein, for and on account of said pretended assessment and levy for said year the sum of Four Hundred and Fifty-Seven and 48-100 Dollars ($457.48); and

Denies that of the said alleged taxes, to-wit: Four Hundred and Fifty-Seven and 48-100 Dollars ($457.48) one-half thereof, became due and payable on the first day of January, 1897, and the other half thereof on the first day of July, 1897, or that the same or any part thereof are due and unpaid.

This defendant further denies that the said alleged and pretended tax bore interest from the said alleged payment thereof at the rate of 25 per cent per annum; and

Denies that any interest in any amount on any account is due, owing and unpaid to the plaintiff herein.

And the said defendant further denies that on the 7th day of September, A. D. 1897, taxes were legally assessed and levied against it for the various Territorial, County and School purposes as well also for the payment of the certain judgments rendered in the above entitled Court against the Board of County Commissioners of the said

County of Grant in respect to certain simple contract indebtedness of said County, said pretended and alleged tax amounting in the aggregate to the sum of Three Thousand, Eight Hundred Twenty and 10-100 Dollars (3,820.10); and

Denies that the said pretended taxes were levied and assessed in respect to the following property situate, lying and being in said County of Grant at and prior to the time of such pretended assessment and levy, and then and there subject to taxation under the laws of this Territory, to-wit: The road-beds, rights-of-way, franchises, rolling stock, telegraph lines, main and side tracks of this defendant, together with all other property of whatever kind, character and description situate and being within the limits of said County and Territory.

And this defendant further denies that the same was re-
38 turned and listed for assessment by this defendant in said County prior to said alleged and pretended assessment and levy; and

Denies that this defendant by reason of said alleged and pretended assessment became and was and is liable for the payment of said taxes so pretended and alleged to have been assessed against it.

And this defendant denies that there is due, owing and unpaid to the plaintiff herein, for and on account of the pretended assessment and levy herein the sum of Six Hundred, Thirty-Six and 4-100 Dollars ($636.04) or any other sum whatever; and

Further denies of said last mentioned sum ($636.04), one-half thereof became due and payable on the first day of January, A. D. 1898, and the other one-half thereof on the first day of July, A. D. 1898, or at any other time; and

Denies that the same or any part thereof is due, owing and unpaid; and

Denies that the said alleged and pretended taxes bore interest from the said alleged time of payment thereof at the rate of 25 per cent per annum; and

Denies that any sum, taxes or interest, in any amount on any account is due, owing and unpaid to the plaintiff h-rein by this defendant.

And this defendant having fully answered the said complaint, prays to be hence dismissed with its costs.

R. E. TWITCHELL,
Attorney for Defendant.

Said answer is endorsed as follows:

No. 3457.

District Court, Grant County.

Territory of New Mexico,

vs.

The R. G. M. and P. Rd. Co.

ANSWER.

Filed in my office April 4th, 1899.

JAS. P. MITCHELL, Clerk.

By H. B. HOLT, Deputy.

39 R. E. TWITCHELL,

Las Vegas, N. M.,

Attorney for Defendant.

In the District Court, Grant County, Territory of New Mexico.

Territory of New Mexico, Plaintiff,	)
vs.	) No.
The Silver City, Deming and Pacific Railroad Company,	)
Defendant.	)

ANSWER.

Now comes said Silver City, Deming and Pacific Railroad Company, defendant in the above entitled cause, by R. E. Twitchell, Esq., its attorney, and for answer to the complaint of plaintiff, the Territory of New Mexico, says:

It denies that heretofore, to-wit: On the 8th day of November, A. D. 1895, taxes were legally levied and assessed in the said County of Grant against the said defendant for the various Territorial, County and School purposes as well also for the payment of a certain judgment rendered in this Court against the Board of County Commissioners of the said County of Grant in respect to a certain contract indebtedness of said County of Grant; said taxes amounting in the aggregate to the sum of Seven Thousand, Eight Hundred, Seven Dollars; and

Denies that said taxes were levied and assessed in respect to the following property, situate, lying and being within the said County of Grant at and prior to the time of such levy and assessment; and

Denies that the same were then and there subject to taxation under the laws of said Territory, to-wit: The road-beds, rights-of-way, franchises, rolling stock, telegraph lines, station houses, main tracks and side tracks of this defendant situate within the limits of

40 said County of Grant, together with all other property of whatever kind, character and description belonging to this defendant situate and being within the limits of the said County of Grant and Territory of New Mexico; and

Denies that the same or any part thereof was returned and listed for assessment in said County prior to the said alleged and pretended assessment; and

Denies that this defendant by reason of such pretended levy and assessment became and was liable for the payment of said taxes so alleged to have been listed and assessed against it.

This defendant further denies that it has paid of the said pretended tax any sum whatever; or that there is due and owing from this defendant on account of such alleged and pretended assessment to the said plaintiff any sum whatever, whether on account of the said pretended tax or interest thereon.

This defendant further denies that on the 5th day of October, A. D. 1896, taxes were legally levied and assessed against this defendant for the various Territorial, County and School purposes as well as also for the payment of certain judgments rendered in the above entitled Court against the Board of County Commissioners of the County of Grant in respect to certain simple contract indebtedness of said County; and

Denies that said taxes amounted in the aggregate to the sum of ($8,261.15) Eight Thousand, Two Hundred Sixty-One and fifteen hundredths Dollars, or any other sum, and

Denies that the said alleged and pretended taxes were levied and assessed in respect to the following property situate and lying within the County of Grant and Territory of New Mexico at and prior to the time of such alleged and pretended levy and assessment, and then and there subject to taxation under the laws of the Territory of New Mexico, to-wit: The road-beds, rights-of-way, franchises, rolling stock, telegraph lines, the main tracks and side tracks of this defendant, together with all other property of what-
41 ever kind, character and description situate and being within the limits of said County and Territory; and

Denies that the same or any part thereof was returned and listed for assessment in said County prior to the said alleged and pretended assessment by the said defendant; and

Denies that the said defendant by reason of any such pretended levy and assessment became and was liable for the payment of said tax so pretended to have been listed and assessed against it.

This defendant further denies that there is due and owing from it to the Territory of New Mexico, the plaintiff herein, for and on account of said pretended assessment and levy for said year the sum of One Thousand, Four Hundred and Sixty and 35-100 Dollars ($1,460.35); and

Denies that of the said alleged taxes, to-wit: One Thousand, Four Hundred and Sixty and 35-100 Dollars ($1,460.35) one-half thereof, became due and payable on the first day of January, 1897, and the other half thereof on the first day of July, 1897, or that the same or any part thereof are due and unpaid.

This defendant further denies that the said alleged and pretended

tax bore interest from the said alleged payment thereof at the rate of 25 per cent per annum; and

Denies that any interest in any amount on any account is due, owing and unpaid to the plaintiff herein.

And the said defendant further denies that on the 7th day of September, A. D. 1897, taxes were legally assessed and levied against it for the various Territorial, County and School purposes as well also for the payment of the certain judgments rendered in the above entitled Court against the Board of County Commissioners of the said county of Grant in respect to certain simple contract indebtedness of said County, said pretended and alleged tax amounting in the aggregate to the sum of Eleven Thousand, Fifty-Nine and 90-100 Dollars (11,059.90); and

Denies that the said pretended taxes were levied and as-
42 sessed in respect to the following property situate, lying and being in the said County of Grant at and prior to the time of such pretended assessment and levy, and then and there subject to taxation under the laws of this Territory, to-wit: The road-beds, rights-of-way, franchises, rolling stock, telegraph lines, main and side tracks of this defendant, together with all other property of whatever kind, character and description situate and being within the limits of said County and Territory.

And this defendant further denies that the same was returned and listed for assessment by this defendant in said County prior to said alleged and pretended assessment and levy; and

Denies that this defendant by reason of said alleged and pretended assessment became, was and is liable for the payment of said taxes so pretended and alleged to have been assessed against it.

And this defendant denies that there is due, owing and unpaid to the plaintiff herein, for and on account of the pretended assessment and levy herein the sum of Four Thousand, Three Hundred, Forty-Five and 70-100 Dollars ($4,345.70) or any other sum whatever; and

Further denies of said last mentioned sum $4,345.70, one-half thereof became due and payable on the first day of January, A. D. 1898, and the other one-half thereof on the first day of July, A. D. 1898, or at any other time; and

Denies that the same or any part thereof is due, owing and unpaid; and

Denies that the said alleged and pretended taxes bore interest from the said alleged time of payment thereof at the rate of 25 per cent. per annum; and

Denies that any sum, taxes or interest, in any amount on any account is due, owing and unpaid to the plaintiff herein by this defendant.

And this defendant having fully answered the said complaint, prays hence to be dismissed with its costs.

R. E. TWITCHELL,
Attorney for Defendant.

Said answer is endorsed as follows, to-wit:

43 No. 3458.

District Court, Grant County.

Territory of New Mexico,

vs.

Silver City, Deming and Pacific Railroad Company.

ANSWER.

Filed in my office April 4th, 1899.
JAS. P. MITCHELL, Clerk.
By H. B. HOLT, Deputy.
R. E. TWITCHELL,
of Las Vegas, N. M.
Attorney for Defendant.

And be it further remembered, That afterwards, to-wit: At a regular term of said Court begun and held within said County of Grant, at the Court House in said County on the 5th day of March, 1900, and on the Third day of said term the same being the 7th day of March, 1900, the following among other proceedings were had and entered of record, to-wit:

Territory of New Mexico, vs. The Atchison, Topeka and Santa Fe R. R. Co.	3425.	Civil.

Come now the parties hereto by their respective attorneys, and the trial of this cause is set for Monday of the third week of the present term of this court.

And be it remembered, that afterwards, to-wit: At a regular term of said Court begun and held within said County of Grant, at the Court House in said County on the third day of September, 1900, and on the Fourth day of said term the same being the 6th day of September, 1900, the following among other proceedings were had and entered of record, to-wit:

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Territory of New Mexico, vs. The Atchison, Topeka and Santa Fe R. R. Co.	3425.	Civil.

Come now the parties hereto by their respective attorneys, and by consent, it is ordered by the Court that the trial of this cause be, and the same is hereby, set for Wednesday of the Fourth week of the present term of this Court.

Territory of New Mexico, vs. The Rio Grande, Mexico and Pacific Railroad Company.	3457.	Civil.

Come now the parties hereto by their respective attorneys, and upon their application it is ordered by the Court that this cause be, and the same is hereby, set for trial on Wednesday of the Fourth week of the present term of this Court.

Territory of New Mexico, vs. The Silver City, Deming and Pacific Railroad Company.	3458.	Civil.

Come now the parties hereto by their respective attorneys, and upon their motion it is ordered by the Court that the trial of this cause be, and the same is hereby, set for Wednesday of the Fourth week of the present term of this Court.

And be it further remembered, that afterwards, to-wit: On the first day of May, 1901, there was filed in the office of the Clerk of said Court, an Agreed Statement of Facts, which said Agreed Statement of Facts is in words and figures as follows, to-wit:

45 *In the District Court, Third Judicial District, County of Grant, Territory of New Mexico:*

Grant, Territory of New Mexico.

Territory of New Mexico, Plaintiff. Versus. The A., T. and S. F. Railway Company, The R. G., M. and P. Railroad Company and The S. C. D. and P. Railroad Company, Defendants.	Numbers 3425, 3457, 3458.

AGREED STATEMENT OF FACTS.

I.

Within the time required by law, for the years 1895, 1896 and 1897, respectively, all the property of the above named defendants, as well as all the property of the Atchison, Topeka and Santa Fe Railroad Company, situate in the County of Grant and Territory of New Mexico, on the first day of March in each of the said years 1895, 1896 and 1897, was, by the proper representatives of said companies duly listed and returned to the proper assessing officers of the said county of Grant for the purposes of taxation for said years, respectively, copies of which said returns, so made as aforesaid, are hereto

attached, marked Exhibits "A", "B" and "C" and made a part of this statement.

II.

The Board of County Commissioners in and for the said County of Grant, sitting as a Board of Equalization, according to law, at the times required by law, in and during the years 1895, 1896 and 1897, raised the return of the said defendants and the said Atchison, Topeka and Santa Fe Railroad Company, so made as aforesaid, as by the record of the proceedings of said Board of County Commissioners, in and for the said years 1895, 1896 and 1897, more fully appears, which said record is hereto attached marked Exhibit "D" and made a part hereof.

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III.

That within the time required by law, an appeal from the action of the Board of County Commissioners was taken in and during the said years 1895, 1896 and 1897, respectively, by said defendants and each of them and the Atchison, Topeka and Santa Fe Railroad Company, to the Territorial Board of Equalization, which said last named Board, after argument and due consideration of said appeals for the said years respectively, did act thereon and sustain said appeals, as will more fully appear from the certified copy of the proceedings of the said Territorial Board of Equalization, held during said years relative to appeals and fixing the valuation upon all railroad property in the Territory of New Mexico for said years, which said certified copy is hereto attached, marked Exhibit "E" and made a part hereof.

IV.

That the Board of County Commissioners and the several assessing officers of the County of Grant were duly notified of the said action of the Territorial Board of Equalization upon the several appeals of the said defendants and the said Atchison, Topeka and Santa Fe Railroad Company.

V.

Within the time required by law, in and during the years 1895, 1896, and 1897, the said Board of County Commissioners made the annual levy upon all property in the said County of Grant, including the property of the said defendants and the Atchison, Topeka and Santa Fe Railroad Company, for the purpose of taxation for each of said years respectively which said assessment and levy for the year 1895 is in the words and figures following, To-wit:

"Territory of New Mexico, County of Grant.
Office of the Board of County Commissioners.

At a regular session held on the eighth day of November, A. D. 1895.

47 It is ordered by the Board of County Commissioners of said County: That the preceding assessment roll and each and every assessment therein contained, as originally returned and assessed, or as shown thereon to have been revised and corrected by the Board, be and the same is hereby approved.

And that a tax of 6 05-100 mills on the dollar for county purposes and of two and one-half mills on the dollar for school purposes and of 3 20-100 mills on the dollar for court fund and 3 50-100 mills for judgment A. B. Laird, and for various Territorial funds, to-wit:

For Territorial Purposes, 6 mills on the dollar.

For Territorial Institutions Fund, 1 75-100 mills on the dollar.

For Cattle Indemnity Fund, 50-100 mills on the dollar. is hereby levied upon all the property therein returned assessed liable to taxation.

In Witness Whereof

Attest:
E. M. YOUNG,
Probate Clerk.
(SEAL)

THOMAS FOSTER,
Chairman of the Board.
A. J. CLARK,
J. N. UPTON,
Commissioners.

And which levy for the year 1896, as appears by the record of the proceedings of said Board of its session held on the 5th day of October, 1896, is in words and figures following, to-wit:

"Territory of New Mexico, County of Grant.
Office of the Board of County Commissioners.

At a regular session held on the 5th day of October, A. D. 1896—It is ordered by the Board of County Commissioners of said County: That the preceding assessment roll and each and every assessment therein contained, as originally returned and assessed, or as shown thereon to have been revised and corrected by the Board, be and the same hereby is approved:

48 And that a tax of 6 55-100 mills on the dollar for county purposes and of two and one-half mills on the dollar for school purposes, 4 50-100 mills on the dollar for judgments, 3 mills on the dollar for special school Precinct No. 11, 3 mills on the dollar for special school Precinct No. 24 and 3 20-100 mills on the dollar for court fund, and 8 25-100 mills for various Territorial Funds, to-wit:

For Territorial Purposes, 6 mills on the dollar.

For Territorial Institutions Fund, 1 75-100 mills on the dollar.

For Cattle Indemnity Fund, 50-100 mills on the dollar is hereby

levied upon all property therein returned assessed liable to taxation.
In Witness Whereof

Attest:
E. M. YOUNG,
Probate Clerk.
(SEAL)

THOMAS FOSTER,
Chairman of the Board.
J. N. UPTON,
A. J. CLARK,
Commissioners.

And which levy for the year 1897, as appears by the record of the proceedings of said Board of its session held on the 7th day of September, A. D. 1897, is in the words and figures following, to-wit:

Territory of New Mexico, County of Grant,
Office of the Board of County Commissioners.

At a regular session held on the 7th day of September, A. D. 1897—It is ordered by the Board of County Commissioners of said County:—That the preceding assessment roll and each and every assessment therein contained, as originally returned and assessed, or as shown thereon to have been revised and corrected by the Board, be and the same is hereby approved.

And that a tax of 16 and 50-100 mills on the dollar for county purposes and 2 and 1-2 mills on the dollar for school purposes and of 3 and 20-100 mills on the dollar for court fund and 12 and 30-100 mills for various Territorial funds, to-wit:

Sheep and goat sanitary, 1 50-100 mills per head.
49 For Territorial purposes, 7 mills on the dollar.
For Territorial institutions, 2 50-100 mills on the dollar.
For special tax for the 49th fiscal year, 1 1-4 mills on the dollar.
For cattle indemnity fund, 50-100 mills on the dollar.
For capital contingent sinking fund, 1-2 mill on dollar.

And a further special tax of 1 mill on the dollar of the appraised value of all cattle.

For the support of the public schools a levy is made by me in conformity with "An Act to establish public schools in the Territory of New Mexico, approved Feb. 12, 1891, of 2 50-100 of one mill on the dollar upon all taxable property in the Territory, to be collected and paid into the different county treasuries as provided by law.

In witness whereof:—

A. J. CLARK,
Chairman of the Board.
MARTIN MAHER,
H. J. HICKS,
Commissioners.

Attest: E. M. YOUNG, Probate Clerk, etc.

6.

That the only assessment against the property of the said defendants, or that of the Atchison, Topeka and Santa Fe Railroad Com-

pany, or any or either of them, appearing upon the Assessment Roll or Tax Roll or List of the County of Grant, in and for the years 1895, 1896 and 1897, respectively, is in the words and figures, as follows, to-wit:

Name of Property Owner—Atchison, Topeka & Santa Fe R. R.
Description Real Estate—Roadbed, track, right-of-way, rolling stock, etc.
Total Value Land and Improvements—
R. G., M. & P.

10.98 miles main line,.....			
6.91 miles siding.....	$16,175 00		
6 miles telegraph.....	5,549 00		
50 S. C., D. & P.			
48.29 miles main line.....	313,885 00		
1.67 miles sidings.....	3,340 00		
48.29 miles telegraph.....	1,207 00		
Value of personal property.....	16,555 00		
Fixed by County Commissioners.....	435,070 00		
Tank and windmill.....	400 00	690 00	
Depot, etc., Hudson.....	325 00		
Depot, etc., Whitewater.....	300 00		
Ice house, etc.,.....	250 00	550 00	
Dwelling, etc., Silverr City.....	250 00		
Tool house.....	40 00		
Engine Ho. T. Tab. & coal bins.....	900 00		
Depot, etc.,.....	600 00		
Hose Hs. & water tank.....	310 00	2,100 00	
Stock yards.....	250 00		
Tank and windmill, stock yards.....	400 00	650 00	
Value of personal property. 249, 21, 6, 14, 55			
Fixed by assessor.....			$426,185 25
Fixed by Territorial Board of Equalization.....			426,185 25
Territorial purposes.....	$2,557 11		
Territorial institutions.....	745 82		
School.....	1,065 47		
General.....	1,065 47		
Court fund.....	1,363 79		
Judgment.....	1,917 83		
Interest on bonds, 1889.....	1,278 56		
Interest on bonds, 1883.....	149 16		
Contingent expenses.....	213 09		
Road.....	42 62		
Bounty.....	42 62		
Special school.....	615 35		
Total.....			$11,056 89

Amount due January 1, 1897	$5,528 45		
Amount due January 1, 1897	5,528 44		
Amount paid January 1, 1897, less judgment fund tax	4,569 53		
51 Amount paid July 1, 1897, less judgment tax	4,569 53		

1897.

Name of Property Owner—Atchison, Topeka and Santa Fe Railroad Company.

Real Estate—Rio Grande, Mexico & Pacific, Silver City, Deming & Pacific.

Description—Same as that found in return.

Valuation fixed by County Commissioners	$432,021 45	
Territorial Purposes	3024.1502	
Territorial Institutions	885.6440	
Special Tax	540.0268	
Capitol Contingent Sinking Fund	216.0107	
School	1080.0536	
General	.1728.0858	
Court Fund	1382.4686	
Judgment	1944.0965	
Interest on Bonds 1883	172.8086	
Interest on Bonds 1889	172.8086	
Interest on Bonds 1889	1123.2558	
Roads	216.0107	
Special School	632.2926	
Total	14889.0004	
Amount due January 1st, 1898	7444.5002	
Amount due July 1st, 1898	7444.5002	

January 1st, 1898. Payment of $4,953.64 on valuation 329331.45 as returned by said company less county judgments.

July 1st, 1898. Payment of $4,953.64 on valuation as returned by said Company 329,331.45 less County judgments.

Final Assessed Value	Pd. $423,061 00		$435,070 00
Territorial Tax—			
Territorial Purposes		$2,610 42	
Territorial Institutions		761 37	
52 School		1,087 68	
County Tax—			
General		1,087 68	
Court Fund		1,392 22	
Judgment		1,522 75	
Interest—Bonds		1,087 68	
Interest—Bonds		152 27	
C. E.		27 54	

R.	43 50	
Special School Precinct 3	20 00	
Special School Precinct 11	635 27	
Amount due Jan. 1st, 1896		5,330 94
Amount due July 1st, 1896		5,330 94
Total Tax		10,661 88
Amount Paid on Valuation as Returned by Defendants and Sustained by the Territorial Board of Equalization:—		
January 1, 1896		4,452 48
July 1, 1896		4,452 00

1896.

Name of Property Owner: Atchison, Topeka and Santa Fe Railroad Company.

Real Estate.	Value of Land.	Total Value Land and Improvements.
Rio Grande, Mexico and Pacific	$71,370 00	
10.98 miles main track at $6,500		
7.10 miles side track at $2,500	17,750 00	
6 miles telegraph line	549 00	89,669 00
Silver City, Deming and Pacific		
48.29 miles main track at $6,500	313,885 00	
2.14 miles side track at $2,500	5,350 00	
48.29 miles telegraph line	1,177 25	320,442 25
Rio Grande, Mexico & Pacific		
Car repair shops, Deming	25 00	
Section house, etc.	400 00	
Tool house	40 00	
53 Depot and hotel, 1-2 interest in	3,750 00	
Freight depot, etc.	1,250 00	
Track scales	100 00	
Baggage room	150 00	
Tenements, Nos. 6 to 10, Whitney	600 00	
Coal chutes and bins	700 00	
Ice house	150 00	
Pump house	40 00	
Car repair shop	75 00	
Tank	300 00	
Tool house	40 00	
Master mechanic's office	125 00	
Stock yards	300 00	
Stone engine house	1,800 00	
Turn table and oil house	400 00	4,530 00
Tool house, section house, etc., Crawford	290 00	

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That within the time required by law, prior to the attaching of any penalty, the said defendants and the said Atchison, Topeka and Santa Fe Railroad Company paid to the Collector of Grant County, upon the valuation returned by said Companies all taxes levied and assessed against said companies or any or either of them, in and by the levy of the Board of County Commissioners made on the 8th day of November, A. D. 1895, to-wit:, the sum of $8,904.96, except the sum of $1,522.75, which said last named sum was a tax levied for and on account of a certain judgment against the Board of County Commissioners of the County of Grant and in favor of one, A. B. Laird, for the payment of which said judgment, the said Board of County Commissioners did, at the time of the making of the regular annual levy on the 8th day of November, 1895, make a special levy of three and one-half mills upon all the taxable property in said County and as contained in the assessment roll of said County, approved November 8, 1895.

And the amount in dispute between the plaintiff and said
54 defendants and the said Atchison, Topeka and Santa Fe Railroad Company, for the said year 1895 is the sum of $1,480.-71, levied on account of a judgment against said County of Grant, rendered in favor of Andrew B. Laird, on the return valuation made by the defendants, and the sum of $276.21, total taxation on the valuation of $12,011.00, the amount of raise in valuation made by the said Board of County Commissioners on the property described in Schedules 2 and 3 of the property returns of the defendants for the year 1895.

8.

That the said judgment against the Board of County Commissioners of the County of Grant, in favor of the said A. B. Laird, was rendered by the District Court in and for the Third Judicial District within and for the said County of Grant, and was for and on account of certain claims, allowances and approved accounts belonging to the said A. B. Laird, against the said County of Grant, and were due him for services rendered, supplies furnished and materials supplied to the said County of Grant in and during years prior to the date of the filing of the suit in which the said judgment was rendered, all of which said claims, allowances and approved accounts were a part of a current general expense of the said County of Grant during the years in which the same were ordered and incurred, and this, the said judgment and the claims and allowances did not arise upon nor include any charge against the said County of Grant for or on account of any bonded debt of said County nor upon any coupon of any bond theretofore issued by the said County of Grant, nor for any interest upon said bond or coupon, but said judgment was simply and solely rendered for an- on account of claims, allowances and approved accounts of claims due and owing said A. B. Laird for services rendered or supplies and materials furnished by him to the said

County of Grant in and during a period prior to the filing of the suit in which the said judgment was rendered.

9.

55 That within the time required by law and prior to the attaching of any penalty, the said defendants and the said Atchison, Topeka and Santa Fe Railroad Company, paid to the Collector of the County of Grant, upon a valuation of the property of said Companies as fixed by the Territorial Board of Equalization, to-wit: a valuation of $426,185.25, all taxes levied and assessed against said Companies or any or either of them in and by the levy of the Board of County Commissioners made on the 5th day of October, 1896, to-wit: the sum of $9,139.06, except the sum of $1,917.83, which said last named sum was a tax levied for and on account of and for the payment of certain judgments against the Board of County Commissioners of the County of Grant and in favor of certain judgment creditors of the said County of Grant, for the payment of which said judgments the Board of County Commissioners did, at the time of the making of the regular annual levy on the 5th day of October, A. D. 1896, make a special levy of four and one-half mills upon all the taxable property in said County and as contained in the assessment roll of said County, approved October 5, 1896.

10.

That the said judgments against the Board of County Commissioners of the County of Grant, and each of them, in favor of the said judgment creditors, were rendered by the District Court in and for the Third Judicial District sitting within and for the County of Grant, and were each for and on account of certain claims, allowances and approved accounts, the property of the said creditors, against the said County of Grant, and were claims, allowances and approved accounts theretofore made and issued to various people by the said Board of County Commissioners for and on account of services rendered and supplies and materials furnished to the said County of Grant, in and during certain years prior to the date of the filing of the suits in which the said judgments

56 were rendered, all of which said claims, allowances, approved accounts and judgments were a part of the current general expense of the said County of Grant during the years in which the same were ordered and incurred and that the said judgments, nor any or either of them, did not arise upon nor include any charge against the said County of Grant for or on account of any bonded debt of the said County nor upon any coupon of any bond theretofore issued by the said County of Grant nor for any interest upon said bond or coupon, but the said judgments were simply and solely rendered for and upon account of claims, allowances and approved accounts due and owing to the said creditors for services rendered or supplies or materials furnished to the said County of

Grant in and during a period prior to the filing of the suits in which the said judgments were rendered.

11.

That within the time required by law and prior to the attaching of any penalty, the said defendants paid to the Collector of the County of Grant upon the valuation returned by said Companies—a valuation of $329,331.45—all taxes levied and assessed against said Companies, or any or either of them, in and by the levy of the Board of County Commissioners made on the 7th day of September, 1897, to-wit:—the sum of $9,907.28, except the sum of $1,944.0965, which said last named sum was a tax levied upon an assessment made by the Board of County Commissioners of said County in the sum of $432,021.45, for and on account of and for the payment of certain judgments against the Board of County Commissioners of the County of Grant and in favor of certain judgment creditors of said County for the payment of which said judgments the Board of County Commissioners did, at the time, of the making of the regular annual levy, on the 7th day of September, 1897, and included in the levy for County purposes, which latter was sixteen and one-half mills upon the dollar, make a levy upon all the taxable property in said County, and as contained in the assessment roll of said
57 County, approved September 7, 1897.

And that the amount in dispute between the plaintiff and defendants and the said Atchison, Topeka and Santa Fe Railroad Company, is the sum of $1,481.96, levied on account of the aforesaid judgments on the valuation of property paid on by the defendants, and the sum of $3,283.14, total taxation on the valuation $96,580.00, the amount of raise by said Board of County Commissioners in the valuation of the property described in Schedule No. 1 of defendants' property return for the said year, and the sum of $216.64, total taxation on the valuation $6,110.00, the amount of raise by the said Board of County Commisisoners in the valuation on the property described in Schedules Nos. 2 and 3 of defendants' property return for said year.

12.

That the said judgments against the Board of County Commissioners of the County of Grant, and each of them, in favor of the said judgment creditors, were rendered by the District Court in and for the Third Judicial District, sitting within and for the County of Grant, and were each for and on account of certain claims, allowances and approved accounts against the said County of Grant, and were claims, allowances and approved accounts theretofore made and issued to various people by the said Board of County Commissioners for and on account of services rendered and supplies and materials furnished to the said County of Grant in and during certain years prior to the date of the filing of the suits in which the said judgments

were rendered, all of which said claims, allowances, approved accounts and judgments were a part of the current general expense of the said County of Grant during the years in which the same were ordered and incurred and that the said judgments, nor any or either of them, did not arise upon nor include any charge against the County of Grant for or on account of any bonded debt of the said county nor upon any coupons of any bond theretofore
58 issued by the said County, nor for any interest upon said bond or coupon, but the said judgments were simply and solely rendered for and on account of claims, allowances and approved accounts due and owing the said creditors by the said County for services rendered or supplies and materials furnished to the said County of Grant in and during a period prior to the filing of the suits in which the said judgments were rendered.

13.

That each and every act of said Territorial Board of Equalization, with reference to the valuation of the property of said defendants, as shown by the said Exhibit "E" was made pursuant to the provisions of an act of the Legislative Assembly of the Territory of New Mexico entitled "An Act Providing for a Board of Equalization and prescribing its duties, approved February 23, 1893, and the several acts amendatory thereto and supplemental thereto.

14.

That at the meeting of the Board of County Commissioners of the said County of Grant, sitting as a Board of Equalization, held on the ——— day of ———, A. D. 1897, the said Board of County Commissioners raised the return of the said defendants from a total valuation of $329,331.45 to a total valuation of $432,321.45, a part of which raise in valuation consisted in a raise of $2,000 per mile for 48.29 miles of track of the said defendants: to-wit—the Silver City, Deming and Pacific Railroad, or a total raise upon track of $96,580.00 and upon superstructures, buildings, etc., 1-8 of $6,110.00.

That within the time required by law an appeal was taken and allowed from the aforementioned action of the said Board of County Commissioners of the County of Grant in making said raise, by the said defendants to the Territorial Board of Equalization, by which body said appeal was duly sustained and allowed and the valuation fixed at the valuations returned by the said defendants for the
59 said year, as appears from the order of the said Board of Equalization of the Territory, found in Exhibit "E" hereto attached, and which order is as follows, viz:

Santa Fe, N. M., September 20, 1897.

"In the matter of the appeal of the A., T. & S. F. R. R. from Grant County, New Mexico, said appeal was continued to the January meeting of this Board, on account of the inability of the District Attorney

for said County to attend such meeting, who desired to be heard in the case."

Santa Fe, New Mexico, January 10, 1898.
Afternoon Session, 2 P. M.

"The Board met pursuant to adjournment, all members present as this morning.

"In the matter of the appeal of the Silver City, Deming and Pacific Railroad of Grant County, New Mexico, which was continued from the September meeting of 1897, after receiving the opinion of the Solicitor General of New Mexico and carefully considering all evidence presented to the said Board, the Board sustains the appeal of the A., T. & S. F. R. R. and places the value of said branch line (the same having been shown by proof brought before this Board, the same is a branch line and shall be classified as such) and the Board instructs the Assessor of said County to correct his tax roll in accordance with such finding."

15.

That the levy made by the Board of County Commissioners of Grant County for the year 1895 for general county purposes was 6 05-100 mills exclusive of the levy of 3 and 50-100 mills for the payment of the judgment of A. B. Laird.

That the levy made by the Board of County Commissioners of Grant County for the year 1896 for general county purposes was 6 55-100 mills, exclusive of the levy of 4 and 50-100 mills for the payment of judgments.

That the levy of the Board of County Commissioners of
60 Grant County for the year 1897 for general county purposes was 16 50-100 mills inclusive of the levy for the payment of judgments.

16.

That the assessment and tax rolls of the County of Grant for the years 1895, 1896 and 1897, containing the assessments and taxes levied against the property of the defendants and the Atchison, Topeka and Santa Fe Railroad Company, as appears herein, were and are the assessment and tax rolls of said County for said years, made out by the assessor, approved by the Board of County Commissioners and delivered to and received by the Collector of taxes of the said County in and for said mentioned years 1895, 1896 and 1897.

17.

That the total property valuation, as shown by the assessment rolls of the said County of Grant for the year 1892 is the sum of $4,222,113.00.

That the amount of the levy for the general fund, at the rate of 2 1-2 mills is the sum of $10,555.28, which said last named sum, together with the sum of $1,790.16, levied as a special deficit fund in the year 1894 to cover the unpaid indebtedness of said County

of Grant for the year 1893, formed the general fund applicable to the payment of county expenses for the year 1893.

That of said fund there was collected in said year 1893, for the payment of county expenses, the sum of $7,793.79, leaving a deficit of $4,551.65 uncollected in the general fund in the year 1893.

That the total property valuation, as shown by the assessment rolls for the said County of Grant for the year 1893 in the sum of $4,129,467.00.

That the amount of levy for the general fund, at the rate of 2 1-2 mills, is the sum of $10,323.66, which said last named sum together with the sum of $1,724.59, levied in the year 1895 as a special
61 deficit to cover the indebtedness unpaid in the year 1894, formed a general fund applicable to the payment of county expenses for the year 1894, a total amount applicable to such indebtedness of $12,113.82, of which sum there was duly collected in the year 1894, from general fund, and in the year 1896, from the special deficit fund aforesaid, the sum of $8,328.75, leaving a deficit of $3,719.50 uncollected in the general fund in year 1894.

That the total property valuation, as shown by the assessment rolls of 1894 for the said County of Grant is the sum of $3,580,-232.00.

That the amount of levy for the general fund, at the rate of 2 1-2 mills is the sum of $8,950.58, which said last named sum together with the sum of $1,667.25, levied in the year 1895 as a special deficit to cover the indebtedness unpaid in the year 1894, formed a general fund applicable to the payment of county expenses for the year 1895, of which sum there was collected in the year 1895 from the general fund and in the year 1897, in the special deficit fund aforesaid, the sum of $7,122.07, leaving a deficit of $3,495.76 uncollected in the general fund in the year 1895.

That the total property valuation as shown by the assessment rolls of said County of Grant for the year 1895 is the sum of $3,449,-180.00.

That the amount of levy for the general fund, at the rate of 2 1-2 mills, is the sum of $8,622.95.

That there was no special deficit fund levied in said County of Grant for the said year, and that the said sum of $8,622.95 formed the general fund applicable to the payment of county expenses for the year 1896.

That of said fund there was collected in the said year 1896 the sum of $6,285.46, leaving a deficit of $2,337.49 uncollected in the general fund in the year 1896.

That the total property valuation as shown by the assessment rolls of said County of Grant for the year 1896 is the sum of $3,334,-488.00.

That the amount of the levy for the general fund, at the rate of 2 1-2 mills is the sum of $8,336.22, which said last men-
62 tioned sum formed the general fund applicable to the payment of county expenses for the year 1897.

That of said fund there was collected in the said year 1897, for the payment of county expenses, the sum of $6,300.58, leaving a deficit of $2,035.64 uncollected in the general fund for the year 1897.

18.

That the amount of the judgment aforesaid rendered in favor of Andrew B. Laird against the said County of Grant was the sum of $10,434.34, and the judgment levy made by the said Board of County Commissioners in the year 1895 was made for the payment of the said judgment.

19.

That the judgment levy made in the year 1896 by said Board of County Commissioners was made for the payment of judgments rendered against said County of Grant in favor of the following named persons for the following amounts, respectively, to-wit:

Charles G. Bell	$ 599 57
Silver City National Bank	11,221 73
Henry S. Gillett, et al	1,838 01
A total sum of	$13,659 31

20.

That the judgment levy made in the year 1897 by said Board of County Commissioners was made for the payment of judgments rendered against said County of Grant in favor of the following named persons for the following amounts, respectively, to-wit:

Baylor Shannon	$ 6,397 60
Moorman and Company	3,643 12
Kate Thomas	436 58
Seaman Field	543 62
A total sum of	$11,020 92

21.

63 That all of the indebtedness upon which the said judgments mentioned in Paragraphs 18, 19 and 20 hereof were obtained accrued on account of the current expenses of said County during the years 1893 to 1897 inclusive and were payable out of the general fund of said County of Grant for the said years.

22.

That such indebtedness accrued on account of:—

First:—Salaries of the Probate Clerks, Probate Judges, County Commissioners, County Treasurer, District Attorney, County Jailers and Guards in the County Jail.

Second:—Expenses of regular Territorial elections as fixed by law.

Third:—Fees of Justices of the Peace for the various Precincts of said County; mileage of Constables for the various Precincts; mileage for Sheriffs of said County and for feeding prisoners in the County Jail.

Fourth:—Postage and printing and supplies to the County of Grant.

Fifth:—Transportation of insane persons committed to the Territorial Asylum by the District Court of said County.

Sixth:—Miscellaneous expenses incurred by said County in the management and discharge of its municipal affairs.

23.

That the amount of indebtedness so incurred by said County of Grant forming a part of said judgments and of the levies made for the payment of said judgments under the several classes of Paragraph 22 hereof is as follows, to-wit:

Class 1	$ 9,004 90
Class 2	781 51
Class 3	15,790 85
Class 4	3,309 81
Class 5	362 32
Class 6	5,865 18

24.

64 That the percentage of the levy made in 1895 to cover the indebtedness under Class 1, Paragraph 22, is ..... .08647
Class 2, Paragraph 22, is ..... .00000
Class 3, Paragraph 22, is ..... .83242
Class 4, Paragraph 22, is ..... .05758
Class 5, Paragraph 22, is ..... .01527
Class 6, Paragraph 22, is ..... .00826
That the percentage of the levy made in the year 1896 to cover the indebtedness under Class 1, is ..... .49889
Class 2, is ..... .01735
Class 3, is ..... .05732
Class 4, is ..... .10747
Class 5, is ..... .00000
Class 6, is ..... .31897
That the percentage of the levy made in the year 1897 for the payment of the indebtedness under Class 1, is ..... .11686
Class 2, is ..... .04942
Class 3, is ..... .57365
Class 4, is ..... .11261
Class 5, is ..... .01876
Class 6, is ..... .12868

25.

That the amount of the indebtedness for the year 1893 covered into the aforesaid judgments, for which the levies for the years 1895, 1896 and 1897, respectively, were made, is the sum of $712.41, and that the deficit as heretofore shown in the general fund for that year was the sum of $4,551.65, showing an excess in the levy for the general fund for the said year above the indebtedness covered by said judgments of $3,730.24.

That the amount of the indebtedness for the year 1894 covered in the aforesaid judgments, for which said levies were made is the sum of $15,597.73 and that the deficit as heretofore shown in the general fund for that year was the sum of $3,719.50, showing a deficit in the general fund for that year above the indebtedness covered by said judgments of $11,878.23.

That the amount of indebtedness for the year 1895 covered in aforesaid judgments for which said levies were made is the sum of $7,079.75 and that the deficit, as heretofore shown in the general fund for that year was the sum of $3,495.76, showing a deficit in the general fund for that year above the indebtedness covered by said judgments of $3,583.99.

That the amount of the indebtedness for the year 1896 covered in the aforesaid judgments for which said levies were made is the sum of $11,218.98 and that the deficit as heretofore shown in the general fund for that year was the sum of $2,337.49, showing a deficit in the general fund for that year above the indebtedness covered by said judgments of $8,880.49.

That the amount of indebtedness for the year 1897, covered in the aforesaid judgments for which said levies were made is the sum of $505.70 and that the deficit as heretofore shown in the general fund for that year was the sum of $2,035.64, showing an excess in the general fund abve the indebtedness covered by said judgments of $1,529.94.

That the Territorial Board of Equalization, at their regular meetings held for that purpose in and during said years 1895, 1896 and 1897, fixed the valuation upon all railroad property in the Territory of New Mexico, and that Exhibit "E" hereto attached, is a correct copy of the proceedings of the said Board in that behalf.

That within the time required by law the defendants herein duly appealed from the decision of the Board of County Commissioners of the County of Grant in raising the valuation placed upon defendants' property in said County in and for the year 1897, which said appeals are hereto attached and made a part hereof, marked Exhibit "F" and which said appeals were acted upon by the Territorial Board of Equalization as stated in Paragraph 14 hereof.

66 Territory of New Mexico,
County of Grant

IN THE DISTRICT COURT.

The within and foregoing Statement of Facts, with the several Exhibits thereto attached, in the above entitled cases is hereby agreed to be true and correct, and it is further agreed that a jury may be waived and that the court may try and pass upon the issues in said cases upon the said agreed statement of facts and the several Exhibits thereto attached.

WILLIAM H. H. LLEWELLYN,
District Attorney.
A. H. HARLLEE,
Attorneys for Plaintiff.
R. E. TWITCHELL,
Attorney for Defendants.

EXHIBIT "A."

1895.

SCHEDULES SHOWING

The personal property belonging to the Rio Grande, Mexico and Pacific Railroad Company, the Silver City, Deming and Pacific Railroad, corporations existing under the laws of the Territory of New Mexico, and leased lines of the Atchison, Topeka and Santa Fe Railroad Company in Grant County, Territory of New Mexico, on the first day of March, 1895.

SCHEDULE NO. 1.

Showing roadbed, track, telegraph line, franchises, etc., in

GRANT COUNTY.

THE RIO GRANDE, MEXICO AND PACIFIC RAILROAD.

	Valuation.
Main track—10.98 miles	$71,370 00
Sidetrack—1.67 miles	3,340 00
67 Telegraph—6 wires	549 00
	$88,094 00

SILVER CITY, DEMING AND PACIFIC RAILROAD.

	Valuation.
Main track—48.29 miles	$313,885 00
Sidetrack—1.67 miles	3,340 00
Telegraph—1 wire	1,207 25
Total	$318,432 25

SCHEDULE NO. 2.

Showing buildings, platforms, tanks, etc., in Grant County.

THE RIO GRANDE, MEXICO AND PACIFIC RAILROAD.

Deming—			
Car repair shop, 12x14 wood	$	50.	
Section house, 18x30 wood		300.	
Tool house, 12x16 wood		40.	
Hotel, etc., 1-2 interest, 40x162 wood		3,000.	
Freight depot and platform, 30x175, wood		1,600.	
Scales, 36, wood		125.	
Baggage room, 1-2 int., 27x49, wood		150.	
			$ 5,265.
Whitney—			
Tenements Nos. 6 to 10 each, 18x28, wood	$	600.	
Coal chute and bins, 32x37, wood		1,100.	
Ice house, 24x49, wood		175.	
Pump house, 20x30, wood		150.	
Car repair shop, 15x30, wood		75.	
Tank, 24,		300.	
Tool house, 12x16, wood		40.	
M. M. office, 16x32, wood		125.	
Stock yards, 100x305, wood		450.	
68 Engine house and turntable, 8 stalls, stone		3,000.	
Oil house, 20x28, wood		400.	
			$ 6,415.
Total			$11,680.

SILVER CITY, DEMING AND PACIFIC RAILROAD.

Crawfords—			
Tool house, 12x16, wood	$	40.	
Section house, 16x32, wood		200.	
Tank and windmill, 20, wood		250.	
			$ 490.
Hudson's—			
Depot and platform, 20x52, wood	$	200.	
			$ 200.

Whitewater—		
Depot and platform, 25x40, wood	$ 300.	
Section house, 16x32, wood	200.	
		$ 500.
Silver City—		
Two tanks and windmill, 20, wood	$ 750.	
Depot platform and tool house, 24x80, wood, 12x16, wood	840.	
Coach platform and coal bin, 6x141, wood, 8x28, wood	105.	
Stock yards and hose house, 100x229, 4x6, wood	610.	
Engine house and turntable, 2 stalls, wood, 54, wood	925.	
		$ 3,230.
Total		$ 4,420.

SCHEDULE NO. 3.

Showing the value of track, bridge and building and water service, tools, office and station furniture, fuel, shop machinery and
69 tools, hand and push cars, material and supplies on hand, and all other personal property in Grant County.

THE RIO GRANDE, MEXICO AND PACIFIC RAILROAD.

Deming—Value of station	$ 324.	
Total		$ 324.

SILVER CITY, DEMING AND PACIFIC RAILROAD.

Deming—Value of station	$ 14.	
Crawfords—Value of station	17.	
Hudson's—Value of station	11.	
Whitewater—Value of station	21.	
Silver City—Value of station	48.	
Total		$ 111.

No return was made to Silver City, but property was assessed at $30,065.

EXHIBIT "B."

1896.

SCHEDULE SHOWING

The personal property belonging to The Rio Grande, Mexico and Pacific Railroad, the Silver City, Deming and Pacific Railroad, corporations existing under the laws of the Territory of New Mexico and leased lines of the Atchison, Topeka and Santa Fe Railroad Company, in Grant County, Territory of New Mexico, on the first day of March, 1896.

SCHEDULE NO. 1.

Showing roadbed, tracks, franchises, telegraph, etc., in Grant County.

THE RIO GRANDE, MEXICO AND PACIFIC RAILROAD.

		Valuation.
	Main track, 10.98 miles	$71,370.
70	Sidetrack, 7.10 miles	17,750.
	Telegraph, 6 wires	549.
		$89,669.

SILVER CITY, DEMING AND PACIFIC RAILROAD.

	Valuation.
Main track, 48.29 miles	$313,885.00
Sidetrack, 2.14 miles	4,280.00
Telegraph, 1 wire	1,207.25
Total	$319,372.25

SCHEDULE NO. 2.

Showing depots, tanks, buildings, etc., in Grant County.

THE RIO GRANDE, MEXICO AND PACIFIC RAI-ROAD.

Deming—			
Car repair shop, 12x14	$	25.	
Section house, etc., 18x30		400.	
Tool house, 12x16		40.	
Depot hotel, 1-2 interest, 40x162		3,750.	
Freight depot, 1-2 interest, 30x175		1,250.	
Track scales, 1-2 interest, 60 tons		100.	
Baggage room, 1-2 interest, 27x49		150.	
			$ 5,715.
Whitney—			
Tenements Nos. 6 to 10 each, 18x28	$	600.	
Coal chute and bins, 31x37		700.	
Ice house, 24x49		150.	
Pump house, 20x30		40.	
Car repair shops, 15x30		75.	
Tank, 24		300.	
Tool house, 12x16		40.	
Master mechanic's office, 16x32		125.	
Stock yards, 100x305		300.	
71 Stone engine house, 8 stalls and Turntable, 52,		1,800.	
Stone oil house, 20x28		400.	
			$ 4,530.
Total			$10,245.

SILVER CITY, DEMING AND PACIFIC RAILROAD.

Crawfords—		
Tool house, 12x16	$ 40.	
Section house, etc., 16x32	250.	
Tank and windmill, 20,	400.	
		$ 690.
Hudsons—		
Depot, etc., 20x52	$ 325.	
		$ 325.
Whitewater—		
Depot, etc., 25x40	$ 300.	
Section house, etc., 16x32	250.	
		$ 550.
Silver City—		
Dwelling, etc., brick, 16x123	$ 250.	
Tool house, 12x16	40.	
Engine house, 2 stalls		
Turntable, 54'		
Coal bin, 6x27	900.	
Depot, etc., 24x80	600.	
Hose house, 4x6	10.	
Water tank, 20'	300.	
		$ 2,100.
East of Silver City—		
Stock yards, 100x229	$ 250.	
Tank and windmill, 20'	400.	
		$ 650.
Total		$ 4,315.

72 SCHEDULE NO. 3.

Showing the value of track, bridge, building and water service, tools, office and depot furniture, shop machinery and tools, hand and push cars, fuel on hand, material and supplies and all other personal property, in Grant County.

THE RIO GRANDE, MEXICO AND PACIFIC RAILROAD.

Deming Value of station	$ 324.	
Total		$ 324.

SILVER CITY, DEMING AND PACIFIC RAILROAD.

Crawford's—Value of station	$	21.
Whitewater—Value of station		14.
Hudson's—Value of station		6.
Silver City—Value of station		55.
Total	$	96.

Statement of personal property located in the City of Silver City, Grant County, New Mexico, on May 1, 1896, returned for the purpose of assessment and taxation.

	Valuation.
2.03 miles of main track, at $6,000.00 per ml	$12,180.00
2.03 miles of telegraph line at $25.00 per mile	50.00
0.98 miles of sidetrack at $2,500.00 per mile	2,450.00
Dwelling, etc., brick, size 16x123 feet	250.00
Section, tool house, wood, size 12x16 feet	40.00
Engine house, 2 stalls, wood, turntable, 54 feet long and coal bin, wood, size 8x27 feet	900.00
Depot, platform, etc., wood, size 24x80 feet	600.00
Hose house, wood, size 4x6 feet	10.00
Water tank, wood, size 16x20 feet	300.00
Tools, furniture, material and other property	55.00
Total value of all personal property	$16,835.00

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EXHIBIT "C."

1897.

SCHEDULES SHOWING.

The personal property belonging to the Rio Grande, Mexico and Pacific Railroad, the Silver City, Deming and Pacific Railroad, corporations existing under the laws of the Territory of New Mexico and leased lines of the Atchison, Topeka and Santa Fe Railroad Company, in Grant County, Territory of New Mexico, on the first day of March, 1897.

SCHEDULE NO. 1.

Showing roadbed, tracks, franchises, telegraph, etc., in Grant County.

THE RIO GRANDE, MEXICO AND PACIFIC RAILROAD.

	Valuation.
Main track, 10.98 miles	$71,370.
Sidetrack, 7.10 miles	17,750.
Telegraph, 4 wires	439.20
Total	$89,559.20

SILVER CITY, DEMING AND PACIFIC RAILROAD.

	Valuation.
Main track, 48.29 miles	$217,305.
Sidetrack, 2.14 miles	5,350.
Telegraph, 1 wire	1,207.25
Total	$223,862.25

SCHEDULE NO. 2.

Showing depots, tanks, building, etc., in Grant County.

RIO GRANDE, MEXICO AND PACIFIC RAILROAD.

Deming—			
	Car repair shop, 12x14	$ 25.	
74	Section house, etc., 18x30	400.	
	Tool house, etc., 12x16	40.	
Depot hotel, 1-2 interest, 40x162		4,500	
Freight depot, 1-2 interest, 30x175		1,500	
Track scales, 1-2 interest, 60 tons		100.	
Baggage room, 1-2 interest, 27x49		300.	
			$6,865.
Whitney—			
Coal chute and bins, 12 pockets		$ 700.	
Ice house, 24x49		150.	
Pump house and coal bin, 20x30		40.	
Car repair shop, 15x30		75.	
Tank, 24'		300.	
Tool house, 12x16		40.	
Master mech. office, 16x32		125.	
Stock yards, 190x305		350.	
Engine house, turntable, 8 stalls, 54'		1,800.	
Oil house, 20x28		400.	
			$3,980
Total			$10,845

SILVER CITY, DEMING AND PACIFIC RAILROAD.

Crawford's—		
Tool house, 12x16	$ 40.	
Section house, etc., 16x32	250.	
Tank and windmill, 20'	400.	
		$690.
Hudson—		
Depot, etc., 20x52	$325.	$325.
Whitewater—		
Depot, etc., 25x40	$300.	
Section house, etc., 16x32	250	
		$550.
Silver City—		
Dwelling, etc., 16x123	$250.	
Tool house, 12x16	40.	
75 Engine house, 2 stalls		
Turntable, 54'		
Coal bin, 8x27	900.	
Depot, etc., 24x80	600.	
Hose house, 4x6	10.	
		$1,800.
East of Silver City—		
Stock yards, 100x229	$ 250.	
Tank and windmill, 20'	400.	
		$650
Total		$4,015.

SCHEDULE NO. 3.

Showing the value of track, bridge, building and water service tools, office and depot furniture, shop machinery and tools, hand and push cars, fuel on hand, material and supplies and all other personal property.

RIO GRANDE, MEXICO AND PACIFIC RAILROAD.

Deming, value of station	$263.	
Total		$263.

SILVER CITY, DEMING AND PACIFIC RAILROAD.

Crawford's, value of station	$19.	
Whitewater, value of station	16.	
Hudson, value of station	5.	
Silver City, value of station	47.	
Total		$87.

SILVER CITY, DEMING AND PACIFIC RAILROAD.

Statement of personal property located in the City of Silver City, Grant County, New Mexico, on May 1st, 1897, returned for the purpose of Assessment and Taxation.

76	2.03 miles of main track, at $4,500.00 per mile, value	$9,135 00
	2.03 miles telegraph line, at $25.00 per mile, value	50 00
	0.98 miles side track, at $2,500.00 per mile value	2,450 00
	Dwelling, etc., size 16x123 feet, value	40 00
	Engine house, 2 stalls, wood, turntable, 54 feet long, and coal bin, wood, size 8x27 feet, value	900 00
	Depot platform, etc., wood, size 24x80 (24x80) feet, value	600 00
	Hose house, wood, size 4x6 feet, value	10 00
	Tools, furniture, material and other property, value	47 00
	1 locomotive, value	4,000 00
	1 passenger coach, value	2,000 00
	1 B. M. & E. car, value	$1,500 00
	Total value of all personal property	$20,982 00

EXHIBIT "D."

1895.

Special meeting of the Board of County Commissioners begun and held at Silver City, Grant County, N. M., June 3rd, 1895.

The following raises in assessments for the year 1895 of the following persons and property was made and the clerk ordered to notify the parties so raised.

(The list which follows, includes)

A. T. S. F. R. R. Co. road bed from $6,500 to $8,000 per mile. Pp. 362-365, of record.

Regular meeting of the board of County Commissioners begun and held at Silver City, Grant County, N. M., the 8th day of July, 1895, pursuant to adjournment from July 1st, 1895.

The Board met as a Board of Equalization and acted upon raises in assessments with the following results:

77 (Then follows a long list, including)

A. T. & S. F. R. R. Co. on road bed, not sustained.

A. T. & S. F. R. R. Co. on buildings, etc., sustained. Pp. 366-369, Record of Proceedings.

1896.

Special meeting of the Board of County Commissioners of Grant County, N. M., begun and held in Silver City, N. M., June 15th,

1896, pursuant to adjournment from June 1st, 1896. The following raises in assessments for the year 1896 of the following persons and property was made and the Clerk ordered to notify the parties so raised.

(The list then following includes)

A., T. & S. F. R. R. on personal and real, from $11,894 to $20,470. P. 397 of Record.

Regular meeting of the Board of County Commissioners of Grant County, begun and held at Silver City, N. M., July 6th, 1896.

The Board met as a Board of Equalization and acted upon raises in assessments with the following result:

(One in long list being)

A. T. & S. F. R. R. raise to $20,470.00. Sustained. P. 401 of Record.

1897.

Special meeting of the Board of County Commissioners of Grant County, N. M., begun and held at Silver City, June 7th, 1897.

Board met for the purpose of accepting and approving tax returns for the year 1897, whereupon the following raises in assessment for said year of the following persons and property was made, and the clerk ordered to notify the persons so raised.

(List following includes)

A. T. & S. F. R. R. Co. On personal and real, from $11,894 to $20,470.

A. T. & S. F. R. R. Co. Track scales at Deming, $200.

78 A. T. & S. F. R. R. Co. Track S. C. D. & P. R. R., from $4,500 to $6,500 per mile.

A. T. & S. F. R. R Co Add, pipe line, Whitney to Deming, $500. P. 449 of Record.

1897.

Regular meeting of the Board of County Commissioners of Grant County, begun and held at Silver City, N. M., July 12th, 1897.

The Board met as a Board of Equalization and acted upon raises and assessments with the following result:

A. T. & S. F. R. R. Raise to $20,470 sustained. P. 453 of Record.

TERRITORY OF NEW MEXICO.

Office of the Secretary.

Certificate.

I, George H. Wallace, Secretary of the Territory of New Mexico, do hereby certify there was filed for record in this office at..... o'clock.....M., on the Twelfth day of September, A. D. 1897, the order made by Board of County Commissioners in the matter of the assessment of the Atchison, Topeka and Santa Fe Railway Company certified from the office of Probate Clerk, . . . and also, that I have compared the following copy of the same, with the original thereof now on file, and declare it to be a correct transcript therefrom and of the whole thereof.

In witness whereof, I have hereunto set my hand and affixed my official seal this Sixteenth day of May, A. D. 1899.

(Seal) (Signed) GEO. H. WALLACE,
Secretary of New Mexico.

EXHIBIT "D."

It appearing to the Board that the record of the assessment of taxes against the Atchison, Topeka and Santa Fe R. R. Co. for the year 1897 is erroneous in that it does not correctly express the action of the Board in the premises, it is ordered that the said record
79 be and the same is hereby corrected so as to read as follows, to-wit:

Raise valuation at Deming, New Mexico—

	Returned at	Raised to
Section house, etc	$400 00	$600 00
Depot hotel (1-2 int.)	4,500 00	5,000 00
Baggage room (1-2 int.)	300 00	350 00
Track scales (1-2 int.)	100 00	250 00
Raise valuation at Whitney—		
Coal chutes and bins	700 00	1,000 00
Ice house	150 00	300 00
Pump house and coal bin	40 00	100 00
Tank	300 00	500 00
Stock yards	350 00	500 00
Engine house and turntable	1,800 00	3,000 00
Oil house	400 00	800 00
Silver City—		
Depot, etc	600 00	1,200 00
Engine house, turntable and bins	900 00	1,200 00
Totals	$10,540 00	$14,800 00

Additions—		
Personal property etc., at Silver City		$300 00
Fuel, material, tools, office furniture and personal at Deming		2,000 00
Pipe line from Whitney to Deming		500 00
S. E. 1-4 Sec. 28-T. 23-R. 9-(Deming stock yards) part of above tract—80 acres		100 00
Total		$2,900 00

Silver City, Deming and Pacific Railroad. Main line track.		
	48.29 miles track returned at $4,500 00 mile	$217,305 00
80	48.29 miles track raised to $6,500 00 per mile	313,885 00
A raise of $2,000 00 per mile on 48.29 miles		$96,580 00

It is further ordered that a copy of this record as above changed be served upon said Atchison, Topeka and Santa Fe Railway Company.

Territory of New Mexico,)
) ss.
County of Grant.)

I, E. M. Young, Clerk of the Board of County Commissioners in and for said County and Territory do hereby certify that the above and foregoing is a true and correct copy of the order made by the Board of County Commissioners on the 7th day of September, A. D. 1897, in the matter of the assessment of the Atchison, Topeka and Santa Fe Railway Co., as the same appears of record at pages 461, 462 and 463 in Book 2 of Commissioners Minutes, records of Grant County, N. M.

In witness whereof, I have hereunto set my hand and affixed the seal of said Board at my office in Silver City, N. M., this the 9th day of September, A. D. 1897.

(Seal) E. M. YOUNG,

Clerk of the Board of County Commissioners of Grant County, N. M.

By J. A. SHIPLEY,
Deputy.

(Endorsed.)

Territory of New Mexico,)
) ss.
County of Grant.)

I, E. M. Young, Clerk of the Board of County Commissioners, in and for said County and Territory, do hereby certify that on the

9th day of September, A. D. 1897, I executed the within by
81 delivering a true copy to Conway and Hawkins, Attorneys.

E. M. YOUNG,
Clerk of the Board of County Commissioners of Grant County, N. M.
By J. A. SHIPLEY,
Deputy.

RAISES AS MADE BY THE COUNTY COMMISSIONERS UPON SCHEDULES TWO AND THREE OF DEFENDANTS' TAX RETURNS FOR THE YEAR 1895.

Statement of Valuations, 1895.

Rio Grande, Mexico and Pacific Railroad Company.

Raised valuation—

Schedule No. 2.

Deming and Whitney—

	From	To
Section house	$300 00	$750 00
Hotel, 1-2 interest	3,000 00	6,000 00
Baggage and express room	150 00	500 00
Tenement houses	600 00	1,000 00
Coal chutes	1,100 00	1,500 00
Ice house	175 00	300 00
Pump house	150 00	300 00
Tank	300 00	500 00
Master mechanic's office	125 00	200 00
Engine house, etc	3,000 00	4,000 00
Oil house	400 00	800 00
Total raise on schedule No. 2, $6,550 00..	$9,300 00	$15,850 00
Total raise on schedule No. 3, $3,476 00..	324 00	3,800 00

Total raise on Rio G. Mex. & Pac. Railroad Co. is.....$10,026 00

82 Silver City, Deming and Pacific Company.

Raised valuation—

Schedule No. 2.

	From	To
Silver City—		
Depot and platform	$840 00	$1,000 00
Engine house and turntable	925 00	1,500 00
Adobe and brick house	(additional)	400 00
Whitewater—		
Depot and platform	300 00	500 00
Section house	200 00	300 00
Hudson—		
Depot, etc.	200 00	400 00
Crawford—		
Section house	200 00	400 00
Tank and windmill	250 00	400 00
	$2,915 00	$4,900 00
Total raise on S. City, Dem. & Pac.		$1,985 00

Supplemental to "Exhibit D."

Territory of New Mexico,
Office of the Secretary.

I have compared the following copy of the proceedings of the New Mexico Territorial Board of Equalization relating to assessments and appeals of the Atchison, Topeka and Santa Fe Railway Company and branches for the years 1895, 1896, 1897, 1898 and part of 1899, with the original records thereof on file in this office, and I hereby certify the same to be a correct transcript therefrom, and of all matters relating thereto.

Witness my hand and the seal of the Secretary of the Territory, at Santa Fe, the Twenty-sixth day of April, one thousand eight hundred and ninety-nine.

(Seal) (Signed) GEO. H. WALLACE,
Secretary of New Mexico.

83 EXHIBIT "E."

Tuesday, January 8th, 1895.

The Board met pursuant to the adjournment of yesterday, there being present Messrs. Corbett, Baca, Kelley and Kennedy. There being a quorum present, the Board proceeded to fix a valuation of the various kinds of property throughout the Territory of New

Mexico for the year 1895 and it was ordered and decided by said Board that all railroads of standard gauge which shall be subject to taxation on the first day of March, 1895, in each county in this Territory through which they run and are situated and running north and east of the Atchison, Topeka and Santa Fe Railroad Depot in the city of Albuquerque shall be valued and assessed to the Company or Corporation owning or operating the same at the rate of Seven Thousand Dollars ($7,000.00) per mile for each and every mile of main line; and at the rate of Twenty-five rundred dollars ($2,500.00) per mile for each and every mile of switch and side track; and at the rate of Four Thousand Five Hundred Dollars ($4,500.00) for each and every mile of branch lines; and that the assessment and value per mile on the above stated main lines, branches and switches shall include all rolling stock of said company or companies used thereon, consisting of locomotive engines and cars of all descriptions, but shall not include any buildings, tools or machinery used in repair shops or supplies or materials, nor telegraph lines.

It is further ordered and decided by this Board that all railroads of standard gauge situated south of the north end of the Atchison, Topeka and Santa Fe R. R. depot in the City of Albuquerque, including the Atlantic and Pacific Railroad and all other standard gauge railroads south of said city of Albuquerque subject to taxation on the first day of March, 1895, shall be assessed and valued for the purpose of taxation to the company or companies owning or operating the same in the county through which they run at the rate of Sixty-five Hundred Dollars ($6500.00) per mile for each and every mile of main line and at the rate of Forty-five Hundred Dol-
84 lars ($4500.00) per mile for all branch lines and at the rate of Twenty-five Hundred Dollars ($2500.00) per mile for all switches and side tracks connected therewith, which said valuation shall include all rolling stock used by said company or companies, consisting of locomotive engines and cars of all descriptions; but shall not include any buildings, tools, machinery used in repair shops, or other material or supplies, nor telegraph lines.

It is further ordered and decided that all narrow gauge railroads running and operating in the Territory of New Mexico and subject to taxation on the first day of March, 1895, shall be valued for the purpose of taxation in the counties through which they run at the rate of Twenty-Five Hundred Dollars ($2500.00) per mile, for each and every mile of main and branch lines, and at the rate of Fifteen Hundred Dollars ($1500.00) per mile on all switches and side tracks connected therewith, which said valuation shall include all rolling stock consisting of locomotive engines and cars of all descriptions; but shall not include any buildings, tools, or machinery used in repair shops or other material or supplies, nor telegraph lines. The Board adjourned until tomorrow morning at 10 o'clock a. m.

Wednesday, Jan'y 9th, 1895.

. . . It is further ordered and decided by the Board that all Telegraph lines which are completed and in operation on the first day of March, 1895, shall be valued and assessed to the Company or Companies operating the same in the counties through which they are operated at the rate of Twenty-five Dollars ($25.00) per mile for the first wire and Five Dollars ($5.00) per mile for each and every additional wire. . . .

Santa Fe, New Mexico, Aug. 6, 1895, 9 a. m.

Met pursuant to adjournment.

The full Board being present, the following proceedings were had:

85 In the matter of the appeal of the A. T. & S. F. Rd. Co. from the action of the Board of County Commissioners of Dona Ana County the raise was not sustained, on the buildings and improvements on line of road, but was overruled for the reason that such assessment is different from that made by any other Board in the various counties of the Territory, and that for that reason is discriminating and inequitable. . . .

Santa Fe, Jan. 2, 1896.

On this day at the hour of 2 o'clock p. m. pursuant to the statute in such case made and provided, the Board of Equalization of the Territory of New Mexico, met for the trancaction of such business as might properly come before it. There being present, Mr. C. W. Kennedy, Mr. W. R. Tipton, Mr. George L. Ulrich, Mr. D. C. Hobart, absent Romulo Martinez.

In the matter of the Las Vegas Hot Springs appeal which was brought before the August meeting, and for lack of proper data, referred to the January meeting, after due deliberation this Board sustains the appeal, for the reason that the clerk of San Miguel County, failed to send up a transcript of the record in said cause, and this Board instructs said clerk and the Board of County Commissioners to correct their records of assessment in said cause in accordance with the return made by said Las Vegas Hot Springs Hotel Company. . . .

Santa Fe, New Mexico, January 3rd, 1896.

Board met pursuant to adjournment of yesterday. Present: C. W. Kennedy, W. R. Tipton, Geo. L. Ulrich and D. C. Hobart. Absent, Romulo Martinez.

After due deliberation, this Board has fixed the following values for the ensuing year on railroad property, telegraph lines and telephone lines, within the Territory of New Mexico as follows:

All railroads of standard gauge, which shall be subject to taxation on the first day of March, A. D. 1896, in each county in the Territory of New Mexico, through which they may run and are

86 situated and running north and east of the Atchison, Topeka and Santa Fe Railroad depot, in the City of Albuquerque, N.M., shall be valued and assessed to the company or companies owning or operating the same, at the rate of seven thousand dollars per mile,

for each and every mile of main line, and at the rate of twenty-five hundred dollars per mile, for each and every mile of side, switch and track, and at the rate of four thousand five hundred dollars per mile for each and every mile of branch lines and that the assessment and value per mile on the above stated main line, branch line and switches, shall include all rolling stock of said company or companies used thereon, except such cars as belong to the Pullman Palace Car Company, and designated as Pullman Palace Cars, and consisting of locomotive engines and cars of all descriptions, but shall not include any buildings, machinery or tools used in repair shops, or any supplies or materials, nor shall it include telegraph lines.

It is ordered and decided by this Board that all telegraph lines that are completed and in operation within the Territory of New Mexico, on the first day of March, A. D. 1896, shall be valued and assessed to the company or companies operating the same, within the counties through which they are operated, at the rate of twenty-five dollars per mile for the first wire, and five dollars per mile for each and every additional wire. . . .

It is further ordered and decided by this Board, that all railroads of standard gauge, situated south of the north end of the Atchison, Topeka & Santa Fe Railroad depot, in the city of Alebuquerque, N. M., including the Atlantic and Pacific Railroad, the Southern Pacific Railroad and all other standard gauge railroads, south of said city of Albuquerque, N. M., subject to taxation on the first day of March, A. D. 1896, shall be assessed and valued for the purpose of taxation, to the company or companies owning or operating the same, in the county through which they run, at the rate of six thousand five hundred dollars per mile, for each and every mile of main line, and at the rate of four thousand five hundred dollars
87 per mile, for all branch lines, and at the rate of twenty-five hundred dollars per mile for all switches and side tracks connected with said road; which said valuation shall include all rolling stock, used by said company or companies except, Pullman Palace Cars, consisting of locomotive engines and cars of all descriptions, but shall not include any buildings, tools or machinery used in repair shops, or any other material or supplies, nor telegraph lines.

It is further ordered and decreed by this Board, that all narrow gauge railroads running through and being operated within this Territory of New Mex. and subject to taxation on the first day of March, 1896, shall be valued for the purposes of taxation, in the various counties through which they run at the rate of three thousand dollars per mile for each and every mile of main and branch lines and at the rate of fifteen hundred dollars per mile on all switches and side tracks connected therewith, which said valuation shall include all rolling stock consisting of locomotive engines and cars of all descriptions except Pullman Palace Cars; but shall not include any buildings, tools, or machinery used in repair shops or material or supplies or telegraph lines.

In the matter of fixing the values of standard gauge *h*ailroads, north (north) of the City of Albuquerque, New Mexico, it shall be understood that such valuation, does not apply to the Union Pacific, Denver and Gulf R. R. This Board after due consideration, etc.

August 5th. (1896.)

. . . In the matter of the A. T. & S. F. Rd. Company, Grant County, the appeal was sustained as to the half interest in the depot and freight house assessed; but was disallowed as to the other property mentioned for the reason that to sustain such an appeal would be to discriminate against the rate in other counties, all of which appear to be at the same rate as the case in question. . .

9 o'clock a. m. Jan. 5th. (1897.)

. . . The Territorial Board of Equalization for the Territory of New Mexico has fixed the following values for the ensuing
88 year on railroad property, telegraph lines, and telephone lines within the Territory of New Mexico as follows:

All railroads of standard gauge which shall be subject to taxation on the 1st day of March, 1897, in each county in the Territory of New Mexico, through which they may run and are situated and running north and east of the Atchison, Topeka and Santa Fe R. R. depot, in the city of Albuquerque, N. M., shall be valued and assessed to the companies owning or operating the same at the rate of $7,000.00 per mile, for each and every mile of the main line, and at the rate of $2,500.00 per mile for each and every mile of switch and side track, and at the rate of $4,500.00 per mile for each and every mile of branch lines, and that the assessment and values per mile on the above stated main lines, branch lines and switches, shall include all rolling stock of said company or companies used thereon, except such cars as belong to the Pullman Palace Company, and designated as Pullman Palace Cars. The above rolling stock mentioned consists of locomotive engines, and cars of all descriptions but shall not include any buildings, machinery or tools used in repair shops, or any supplies or materials on hand, nor shall it include the telegraph lines.

It is further ordered and decided by this Board that all railroads of standard gauge, situated south of the north end of the Atchison, Topeka and Santa Fe Railroad depot, in the City of Albuquerque, N. M., including the Atlantic and Pacific Railroad, shall be subject to taxation on the first day of March, 1897, and shall be assessed for taxable purposes to the company or companies owning or operating the same in the county or counties through which they may run, at the rate of $6,500.00 per mile for each and every mile of the main line, and at the rate of $4,500.00 per mile for each and every mile of branch line and shall be assessed at the rate of $2,500.00 per mile for each and every mile of switch and side track connected with and belonging to the said road. Which said Valuation
89 shall include all rolling stock used by said company or companies except Pullman Palace Cars. Said rolling stock in-

cluded, consists of locomotive engines and cars of all descriptions but shall not include any buildings, tools or machinery used in repair shops or any material or supplies on hand and shall not include telegraph lines. . . .

It is ordered and decided by this Board that all telegraph lines that are completed, and in operation within the Territory of New Mexico, on the first day of March, 1897, shall be valued and assessed to the company or companies operating the same within the counties through which they are operated, at the rate of $25.00 per mile, for the first wire, and $5.00 per *wire* for each and every additional wire. . . .

Santa Fe, N. M., September 20, 1897.

The Board met pursuant to adjournment of Saturday. All members present.

In the matter of the appeal of the A. T. & S. F. R. R., from Grant County, New Mexico, said appeal was continued to the January meeting of this Board, on account of the inability of the District Attorney for said County to attend such meeting, who desired to be heard in the case. . . .

Santa Fe, New Mexico, January 10, 1898.

Afternoon Session, 2 P. M.

The Board met pursuant to adjournment. All members present as this morning. In the matter of the appeal of the Silver City, Deming and Pacific Railroad of Grant County, New Mexico, which was continued from the September meeting of 1897, after receiving the opinion of the Solicitor General of New Mexico, and carefully considering all evidence presented, to said Board, the Board sustains the appeal of the A. T. & S. F. R. R. and places the value of said branch line (the same having been shown by proof brought before this Board, that the same is a branch line and shall be classified as such) and the Board instructs the Assessor of said County to
90 correct his tax roll in accordance with such finding. . . .

Santa Fe, N. M. Wednesday Morning.

10 o'clock a. m. January 12, 1898.

The Board met pursuant to adjournment of yesterday afternoon. All members present.

Hon. Henry L. Waldo representing the A., T. and S. F. R. R. appeared before this Board in the matter of taxation of said road for the ensuing year. This Board heard the statements of Judge Waldo, and received and placed on file, comparisons of taxation on various classes of property, for further consideration. . . .

Santa Fe, N. M., January 14, 1898, Friday Morning.

The Board met pursuant to adjournment of yesterday evening. All members present:

The Territorial Board of Equalization for the Territory of New Mexico have filed the following values for the ensuing year, on all taxable property as follows:

All railroads of standard gauge which shall be subject to taxation

on the first day of March, 1898, in each county in the Territory of New Mexico, through which they may run, and are situated and running, north and east of the Atchison, Topeka and Santa Fe Railroad depot, in the city of Albuquerque, New Mexico, shall be valued and assessed to the companies owning or operating the same, at the rate of Seven Thousand Dollars per mile, for each and every mile of main line; and at the rate of Twelve Hundred Dollars per mile, for each and every mile of switch and side track; and that the assessment and values per mile on the above stated main line, and switches and side tracks, shall include all rolling stock of said company or companies used thereon, except such cars as belong to the Pullman Palace Car Company, and designated as Pullman Palace Cars.

The above rolling stock mentioned consists of locomotive engines and cars of all descriptions, but shall not include any buildings, machinery or tools used in repair shops, or any supplies or
91 material on hand, nor shall it include the telegraph lines.

It is further ordered and decided by this Board that all railroads of standard gauge situated south of the north end of the Atchison, Topeka and Santa Fe Railroad depot in the city of Albuquerque, New Mexico, including the Santa Fe Pacific Railroad and Southern Pacific Railroad shall be subject to taxation on the first day of March, 1898, and shall be assessed for taxable purposes, to the company or companies operating or owning the same, in the county or counties through which they may run at the rate of six thousand five hundred dollars per mile, for each and every mile of main line; and at the rate of twelve hundred dollars per mile for each and every mile of switch and side track, connected with and belonging to said road; which said valuation shall include all rolling stock used by said company or companies except Pullman Palace Cars. Said rolling stock included consits of locomotive engines and cars of all description; but shall not include any buildings, tools or machinery used in repair shops or any material or supplies on hand; and shall not include telegraph lines. . . .

January 15-98.

In the matter of fixing values of the various branch lines of railroad running and being operated through the various counties of New Mexico: It is ordered and decided by this Board, that the following valuations shall be placed on the various branch lines of the railroads, to-wit:

Dillon and Blossburg Branch of the A., T. and S. F. R. R. four thousand five hundred dollars per mile of each and every mile of main line, and twelve hundred dollars per mile of switch and side track. Hot Springs Branch of the A., T. and S. F. R. R., four thousand five hundred dollars per mile for each and every mile of main line, and twelve hundred dollars per mile for each and every mile of side track and switches.

In the matter of the Santa Fe Branch of the A., T. and S. F. R. R. this Board places the valuation of said railroad at the rate of four

thousand five hundred dollars per mile for each and every
92 mile of main line and at the rate of twelve hundred dollars per mile for each and every mile of switch and side track.

In the matter of the Socorro and Magdalena Branch of the A., T. and S. F. R. R., this Board places the valuation of said branch at four thousand and five hundred dollars per mile for each and every mile of main line, and at the rate of twelve hundred dollars per mile for each and every mile of switch and side track.

In the matter of the Lake Valley branch of the A., T. and S. F. R. R., this Board places the valuation of three thousand five hundred dollars per mile for each and every mile of main line, and twelve hundred dollars per mile for each and every mile of switch and side track.

In the matter of the Silver City, Deming and Pacific Railroad, this Board fixes the valuation of four thousand five hundred dollars per mile, for each and every mile of main line, and the valuation of twelve hundred dollars per mile of switch and side track.

In the matter of the Whitewater Spur of the A., T. and S. F. R., this Board fixes the valuation at three thousand dollars per mile for each and every mile of main line of said spur, and at the rate of twelve hundred dollars per mile for each and every mile of switch and side track. . . .

It is further ordered and decided by this Board that all telegraph lines that are completed and operated within the Territory of New Mexico, on the first day of March, A. D. 1898, shall be valued and assessed to the company or companies operating the same, within the counties through which they may run and are operated, at the rate of twenty-five dollars per mile for the first wire, and at the rate of five dollars per mile for each and every additional wire. . . .

Afternoon Session, Monday, September 12-98.

The Board met pursuant to adjournment of this morning. All members present.

In the matter of the appeal of the A., T. and S. F. Railway Company, and The Silver City, Deming and Pacific Railway Company,
93 the appeal of said companies is sustained; also the appeal of the aforesaid companies for 1897, which was continued from the September, 1897, to the January meeting, 1898, and then continued to the present meeting, was also sustained the portion of said appeals referring to personal property of said roads for the years 1897 and 1898, was sustained for the reason that all property of like class throughout the various counties through which said road runs, were assessed at the same valuation as has been placed on said property in Grant County by said Railroad, as evidenced by the returns of said company. And this Board instructs the Territorial Auditor to notify the Board of County Commissioners of Grant County to correct their records in accordance with this ruling. . . .

Afternoon Session, Tuesday, Jan. 10, 1899.

Board met pursuant to adjournment. All members present.

Hon. Henry L. Waldo, representing the A., T. and S. F. R. R.,

appeared before the Board in the matter of taxation of said road for the ensuing year. The Board heard the statements made by Judge Waldo and placed the same on file for further consideration. . . .

Friday Morning, Jan. 13, 1899.

Board met pursuant to adjournment of yesterday. All members present.

On motion of Hon. Thos. Hughes the Board proceeded to consider the valuations to be placed on the various classes of property subject to taxation, on the first day of March, 1899, within the Territory of New Mexico.

The Territorial Board of Equalization for the Teritory of New Mexico have fixed the following values, for the ensuing year, on all taxable property, within said Territory, subject to taxation on the first day of March, 1899, as follows:

All railroads of standard gauge which shall be subject to taxation on the first day of March, 1899, in each county, in the Territory of New Mexico, through which they may run and are situated and running north and east of the Atchison, Topeka and Santa Fe Railroad depot, in the city of Albuquerque, New Mexico, shall be
94 valued and assessed to the companies owning or operating the same, at the rate of seven thousand dollars per mile, for each and every mile of main line; and at the rate of twelve hundred dollars per mile, for each and every mile of switch and side track. And that the assessment and values per mile on the above stated main line and switches and side tracks, shall include all rolling stock, of said company or companies used thereon, except such cars as belong to the Pullman Palace Car Company, and designated as Pullman Palace Cars.

The above rolling stock mentioned consists of locomotive engines and cars of all descriptions, but shall not include any buildings, machinery or tools used in the repair shops, or any supplies or material on hand, nor shall it include the telegraph lines.

It is further ordered and decided by this Board, that all railroads of standard gauge, situated south of the north end of the Atchison, Topeka and Santa Fe Railroad depot, in the City of Albuquerque, New Mexico, (including the Santa Fe Pacific Railroad, shall be subject to taxation on the first day of March, 1899, and shall be assessed for taxable purposes, to the company or companies operating or owning the same in the county or counties, through which they may run, at the rate of six thousand five hundred dollars per mile, for each and every mile of main line; and at the rate of twelve hundred dollars per mile, for each and every mile of switch and side track, connected with and belonging to said road; which said valuations shall include all rolling stock used by said company or companies, except Pullman Palace Cars. Said rolling stock included consists of locomotive engines and cars of all descriptions; but shall not include any buildings, tools or machinery used in repair shops, or any material or any supplies on hand; and shall not include telegraph lines.. . .

In the matter of fixing the value of the branch lines of railroad running and operating through the various counties in New Mexico, it is ordered and decided by this Board, that the following
95 valuations shall be placed on the various lines of the railroads, to-wit:

Dillon and Blossburg branch of the A., T. and S. F. R. R. four thousand five hundred dollars per mile, for each and every mile of main line, and twelve hundred dollars per mile, for each and every mile of switch and side track.

Hot Springs branch of the A., T. and S. F. R. R. four thousand five hundred dollars per mile, for each and every mile of the main line, and twelve hundred dollars per mile, for each and every mile of side tracks and switches.

In the matter of the Santa Fe branch of the A., T. and S. F. R. R. this Board places the valuations of said railroad, at the rate of four thousand five hundred dollars per mile, for each and every mile of the main line, and at the rate of twelve hundred dollars per mile, for each and every mile of switch and side track.

In the matter of the Socorro and Magdalena branch of the A., T. and S. F. R. R., this Board places the valuation of the branch at four thousand dollars per mile, for each and every mile of the main line, and at the rate of twelve hundred dollars per mile, for each and every mile of switch and side track.

In the matter of the Lake Valley branch of the A., T. and S. F. R. R. this Board places the valuation of three thousand five hundred dollars per mile, for each and every mile of the main line, and twelve hundred dollars per mile for each and every mile of switch and side track.

In the matter of the Silver City, Deming and Pacific Railroad, this Board fixes the valuation, of four thousand five hundred dollars per mile, for each and every mile of the main line, and the valuation of twelve hundred dollars per mile, for each and every mile of switch and side track.

In the matter of the Whitewater Spur of the A., T. and S. F. R. R., this Board fixes the valuation of three thousand dollars per mile, for each and every mile of the main line, of said spur, and at the rate of twelve hundred dollars per mile, for each and every mile, of switch and side track.

It is further ordered and decided by this Board that all
96 telegraph lines, that are completed and operated within the Territory of New Mexico, on the first day of March, A. D. 1899, shall be valued and assessed to the company or companies operating the same, withia the counties through which they may run and are operated, at the rate of twenty-five dollars per mile for the first wire; and at the rate of five dollars per mile, for each and every additional wire. . . .

TERRITORY OF NEW MEXICO,
OFFICE OF THE SECRETARY,

CERTIFICATE.

I, George H. Wallace, Secretary of the Territory of New Mexico, do hereby certify there was filed for record in this office at..... .....o'clock ..M., on the..... day of ..... A. D. ..... Protest of the Silver City, Deming and Pacific Railroad Company against the valuation placed upon its track by the Board of County Commissioners of Grant County, New Mexico, for the year 1897,..... and also, that I have compared the following copy of the same with the original thereof now on file, and declare it to be a correct transcript therefrom and of the whole thereof.

In witness whereof, I have hereunto set my hand and affixed my official seal this Sixteenth day of May, A. D. 1899.

(SEAL)

(Signed) GEO. H. WALLACE,
Secretary of New Mexico.

EXHIBIT "F."

To the Honorable Board of County Commissioners of Grant County, Territory of New Mexico.

GENTLEMEN:

Your petitioner, The Silver City, Deming and Pacific Railroad Company, respectfully represents to your Honorable Board
97 that it has made and filed with the proper officer of the County of Grant its return of taxable property for the year eighteen hundred and ninety-seven; that in said return it fixed and estimated the value of its road-bed for its running track in said county at $4,500 per mile, and that it had 48.29 miles of said road-bed in said County of Grant, and that the same was of the value of $217,305, and that your petitioner is informed that the said return of said property has been raised by your Honorable Body from the sum of $217,305, which was the amount of the valuation of said track as returned by your petitioner, to the sum of $313,885 being an increase over and above assessment valuation and return of said track by your petitioner of the sum of $96,580, in making which assessment and raise your Honorable Body increased the valuation of said track from the rate of $4,500 per mile to the rate of $6,500 per mile as though the same was a main track of the main line, where as in truth and fact your petitioner represents and states to your Honorable Body that said track of said line is, and is in reality used as, a branch line of railroad in the Territory of New Mexico within the meaning of the definition and intent of the Board of Equalization of the Territory of New Mexico in fixing the rate of taxation for branch lines; that the said Silver City, Deming and Pacific Railroad Company's line lies south of the City of Albuquerque,

New Mexico, and the valuation thereof, has by said Board of Equalization been fixed at the rate of $4,500 per mile for each mile thereof.

Your petitioner also states to your Honorable Body that it has been notified that its real and personal property as returned by it in the County of Grant aforesaid has been increased from the sum of $11,894 to $20,470, and that the Board of County Commissioners has added to this return, track scales at Deming, at a valuation of $200, and a pipe line from Whitney to Deming, at a valuation of $500, and your petitioner states to your Honorable Body that its assessment, return and valuation of its said railroad track and of its said personal property in said county, was a correct, just and
98 fair valuation thereof; the said return of said railroad track being determined by the action of said Board of Equalization as aforesaid, and the said return as to the valuation of said personal property being the same rate and valuation at which similar railroad property throughout the Territory in general is valued.

Your petitioner therefore prays that the action of the said Board of County Commissioners in raising the valuation of said track, and of said personal property, may be revoked and rescinded, and that said valuation of said track and personal property so made by your said petitioner in its return thereof may be reinstated and allowed by your Honorable Board as originally made by your petitioner. And your petitioner further says that it owns no real estate in said County of Grant.

SILVER CITY, DEMING AND PACIFIC RAILROAD COMPANY.
By (Signed) CONWAY & HAWKINS,
its attorneys.

TERRITORY OF NEW MEXICO,
OFFICE OF THE SECRETARY.

CERTIFICATE.

I, Geo. H. Wallace, Secretary of the Territory of New Mexico, do hereby certify there was filed for record in this office, at..... o'clock ..M., on this Twelfth day of September, A. D. 1897, the Appeal of Silver City, Deming and Pacific Railroad Company to the Board of Equalization, ... and also, that I have compared the following copy of the same, with the original thereof now on file, and declare it to be a correct transcript therefrom and of the whole thereof.

In witness whereof, I have hereunto set my hand and affixed my official seal this Sixteenth day of May, A. D. 1899.
(SEAL)
(Signed) GEO. H. WALLACE,
Secretary of New Mexico.

99 EXHIBIT "F."

To the Honorable Board of County Commissioners of Grant County, Territory of New Mexico.

GENTLEMEN:

Your petitioner, having heretofore presented its petition to your Honorable Body praying that the action of your Honorable Body heretofore taken in raising the valuation of your petitioner's railroad track in the County of Grant from the rate of $4,500.00 to $6,500.00 per mile, and the raise of the valuation of its personal property as returned by it in the County of Grant from the sum of $11,894.00 to the sum of $20,470.00 and also the adding to its return of track scales at Deming at a valuation of $200.00 and the pipe line from Whitney to Deming at a valuation of $500.00 should be revoked and rescinded, and that the original return and valuation of your petitioner as heretofore made by it as required by law, should be reinstated and affirmed by your Honorable Body, and your Honorable Board having refused the prayer of your petitioner, and having ordered and directed that its said raise in the valuation of said property and its additions to the amount thereof should be affirmed.

Now therefore, your petitioner, alleging that the valuation of its said line in the County of Grant aforesaid, is and has been, fixed by law at the sum of $4,500.00 per mile as returned by it, and that the valuation of its personal property as made by it in its original return is, and was, a true and correct valuation and description thereof, hereby takes and prays an appeal from the action of your Honorable Body in declining to grant the petition of your petitioner heretofore presented to your Honorable Board, to, and to be considered by, the Territorial Board of Equalization of the Territory of New Mexico, in order that the return so originally made by your petitioner of the amount and value of its said taxable property in the County of Grant aforesaid may be sustained by said Territorial Board of
100 Equalization, and that the action of your Honorable Board in raising the valuation and amount of said property so owned by your petitioner and so returned by it may be, by said Territorial Board vacated, set aside and held for naught.

And your petitioner will ever pray, etc.

SILVER CITY, DEMING AND PACIFIC RAILROAD COMPANY.

By CONWAY & HAWKINS,
its attorneys.

(Endorsed)
Filed in my office this 12th day of July, 1897.
E. M. YOUNG, Clerk.

Said Agreed Statement of Facts is endorsed as follows to-wit:

In the District Court, Third Judicial District, County of Grant, Territory of New Mexico.

Territory of New Mexico, Plaintiff,
vs.
The A., T. and S. F. Railway Company, The R. G. M. and P. Railroad Company, The S. C. D. and P. Railroad Company, Defendants.
Numbers 3425, 3457, 3458.

AGREED STATEMENT OF FACTS.

W. H. H. LLEWELLYN,
District Attorney.
R. P. BARNES,
A. H. HARLLEE,
Attorneys for Plaintiff.
R. E. TWITCHELL,
Attorney for Defendants.

Filed in my office May 1, 1901.
JAMES P. MITCHELL, Clerk.

101 And be it further remembered, that afterwards, to-wit: At a regular term of said Court begun and held within said County of Grant, at the Court House in said County on the 3rd day of March, A. D. 1902, and on the first day of said term, the same being the 3rd day of March, A. D. 1902, the following among other proceedings were had and entered of record, to-wit:

Territory of New Mexico,
vs.
The Atchison, Topeka and Santa Fe R. R. Co.
No. 3425. Civil.

Come now the parties hereto by their respective attorneys, and upon their motion it is ordered by the Court that the trial of this cause be, and the same is hereby set for Wednesday of the third week of the present term of this Court.

Territory of New Mexico,
vs.
The Rio Grande, Mexico and Pacific R. R. Company.
No. 3457. Civil.

Come now the parties hereto by their respective attorneys, and upon their motion it is ordered that the trial of this cause be, and the same is hereby, set, for Wednesday of the third week of the present term of this Court.

Territory of New Mexico,
vs.
The Silver City, Deming and Pacific R. R. Company.
No. 3458. Civil.

Come now the parties hereto by their respective attorneys, and upon their motion it is ordered by the Court that the trial of this cause be, and the same is hereby set for Wednesday of the third week of the present term of this Court.

And be it further remembered, that afterwards, to-wit: At
102 the said regular term of Court aforesaid, and on the 24th day of March, 1902, the same being the 19th day of said term, the following among other proceedings were had and entered of record, to-wit:

Territory of New Mexico,
vs.
The Atchison, Topeka and Santa Fe R. R. Co.
No. 3425. Civil.

Territory of New Mexico,
vs.
The Rio Grande, Mexico and Pacific Railroad Company.
No. 3457. Civil.

TERRITORY OF NEW MEXICO,
THIRD JUDICIAL DISTRICT COURT,
COUNTY OF GRANT.

I, James P. Mitchell, Clerk of the District Court of the Third Judicial District of the Territory of New Mexico, do hereby certify that the foregoing 77 pages contain a full, perfect, true and correct transcript of the whole of the record in the causes numbered No. 3425, No. 3457 and No. 3458 of the Territory of New Mexico, as plaintiff, and The Atchison, Topeka and Santa Fe Railway Company; The Rio Grande, Mexico and Pacific Railroad Company, and the Silver City, Deming and Pacific Railroad Company, as defendants, as the same appears of record in my office.

In witness whereof, I have here unto set my hand and affixed the seal of said Court at my office in Silver City, New Mexico, this 12th day of December, A. D. 1902.

(SEAL)

JAMES P. MITCHELL, Clerk.
By J. A. SHIPLEY, Deputy.

103 Territory of New Mexico,)
vs.) No. 3458. Civil.
The Silver City, Deming and Pacific Railroad Co.)

Comes now the Territory of New Mexico by W. H. H. Llewellyn, Esq., her District Attorney, and upon his motion it is ordered by the Court that the trial of the foregoing three causes be, and the same are hereby set for April 19th, A. D. 1902, at Las Cruces, New Mexico.

And be it further remembered, that afterwards, to-wit: On the 4th day of November, 1902, there was filed in the office of the Clerk of said Court, a judgment, said judgment is entered of record at pages 540 and 541 in Record "Q" of said Court and is in words and figures as follows, to-wit:

In the District Court, Third Judicial District, County of Grant and Territory of New Mexico.

The Territory of New Mexico, Plaintiff,)
Versus)
The Atchison, Topeka and Santa Fe Railway Company,) No. 3425.
The Rio Grande, Mexico and Pacific Railroad Com-) No. 3457.
pany and the Silver City, Deming and Pacific Rail-) No. 3458.
road Company.
Defendants.)

The above causes coming on to be heard for trial before the Court under a stipulation herein of the parties plaintiff and defendant and upon the agreed statement of facts heretofore filed herein, and the Court having read said agreed statement of facts and having heard the argument of council for the respective parties herein, and being fully advised in the premises, doth find as follows, viz:

That The Atchison, Topeka and Santa Fe Railway Company is indebted to the Plaintiff, the Territory of New Mexico, in the sum of One Thousand Four Hundred Eighty and seventy one-
104 hundredths Dollars for taxes levied and assessed in the year 1895 by said County of Grant, and in the sum of One Thousand Nine hundred seventeen and eighty-three-hundredths dollars for taxes assessed and levied in the year 1896 by said County of Grant for the payment of judgments against said County of Grant and in the sum of One Thousand Four Hundred Eighty-One and Ninety-Six hundredths Dollars for taxes assessed and levied in the year 1897 by said County of Grant, and in the sum of Two Hundred Seventy-Six and Twenty one hundredths Dollars for taxes assessed and levied in the year 1895 by the said County of Grant for Territorial, County and School purposes and for the payment of judgments against said County of Grant upon an increased valuation made by the Board of County Commissioners of said County of Grant, upon the property of the said defendants in said County of

Grant, for said year 1895 being a total indebtedness of Five Thousand One Hundred Fifty-Six and Seventy-One hundredths Dollars;

Wherefore, It is by the Court, Considered, Ordered and Adjudged that the Plaintiff, the Territory of New Mexico, do have and recover of and from the defendants, The Atchison, Topeka and Santa Fe Railway Company, the Rio Grande, Mexico and Pacific Railroad Company and the Silver City, Deming and Pacific Railroad Company, the sum of Five Thousand One Hundred Fifty-Six and Seventy-one hundredths Dollars together with interest thereon at the rate of six per cent per annum from date of its costs in this suit and that execution issue therefor; to which consideration, order and judgment, the said defendants, and each of them, by their attorney, at and before the entering of said judgment, duly except.

Done at Silver City, N. M., this 9th day of October, A. D. 1902.

FRANK W. PARKER,
Associate Justice, etc.

And be it further remembered, that afterwards, to-wit: On the 6th day of December, A. D. 1902, there was filed in the office
105 of the clerk of said Court three writs of error, which said writs of error are in words and figures, as follows, to-wit:

TERRITORY OF NEW MEXICO.

To the District Court of the 3rd Judicial District of the Territory of New Mexico, sitting within and for the County of Grant, Greeting:

Because in the record and proceedings, and in the rendition of judgment, in a certain cause lately pending before you, wherein The Territory of New Mexico was plaintiff, and The Atchison, Topeka and Santa Fe Railway Company was defendant, error has intervened, as it is said, to the damage of the said The Atchison, Topeka and Santa Fe Railway Company and we being willing that such error, if any there be, should be corrected, and speedy justice done in that behalf, do command you, if judgment therein be given, that then under your seal, distinctly and openly, you send a copy of the record and proceedings aforesaid, to the Supreme Court of the Territory of New Mexico, together with this writ, so that you have the same in the said Supreme Court on the first day of the next term thereof, to be begun and held on the first Wednesday after the first Monday in January, A. D. 1903, at Santa Fe, in said Territory, in pursuance of law.

Witness, the Honorable William J. Mills, Chief Justice of the Supreme Court of the Territory of New Mexico, and the seal of the said Court, this 4th day of December, A. D. 1902.

(Seal) J. D. SENA, Clerk.

TERRITORY OF NEW MEXICO.

To the District Court of the Third Judicial District of the Territory of New Mexico, sitting within and for the County of Grant. Greeting:

Because in the record and proceedings, and in the rendition
106 of Judgment, in a certain cause lately pending before you, wherein The Territory of New Mexico was plaintiff, and Rio Grande, Mexico and Pacific Railroad Company was defendant, error has intervened, as it is said, to the damage of the said Rio Grande, Mexico and Pacific Railroad Company and we being willing that such error, if any there be, should be corrected, and speedy justice done in that behalf, do command you, if judgment therein be given, that then under your seal, distinctly and openly, you send a copy of the record and proceedings aforesaid, to the Supreme Court of the Territory of New Mexico, together with this writ, so that you have the same in the said Supreme Court on the first day of the next term thereof, to be begun and held on the first Wednesday after the first Monday in January, A. D. 1903, at Santa Fe, in said Territory, in pursuance of law.

Witness, The Honorable William J. Mills, Chief Justice of the Supreme Court of the Territory of New Mexico, and the seal of said Court, this 4th day of December, A. D. 1902.

(Seal) J. D. SENA, Clerk.

TERRITORY OF NEW MEXICO.

To the District Court of the Third Judicial District of the Territory of New Mexico, sitting within and for the County of Grant. Greeting:

Because in the record and proceedings, and in the rendition of judgment, in a certain cause lately pending before you, wherein The Territory of New Mexico was plaintiff, and Silver City, Deming and Pacific Railroad Company was defendant, error has intervened, as it is said, to the damage of the said —, and we being willing that such error, if any there be, should be corrected, and speedy justice done in that behalf, do command you, if judgment therein be given, that then under your seal, distinctly and openly, you send a copy of the
record and proceedings aforesaid, to the Supreme Court of
107 the Territory of New Mexico, together with this writ, so that you have the same in the said Supreme Court on the first day of the next term thereof, to be begun and held on the first Wednesday after the first Monday in January, A. D. 1903, at Santa Fe, in said Territory, in pursuance of law.

Witness, the Honorable William J. Mills, Chief Justice of the Supreme Court of the Territory of New Mexico, and the seal of the said Court, this 4th day of December, A. D. 1898.

(Seal) J. D. SENA, Clerk.

Said writs of error are endorsed as follows, to-wit:
Supreme Court, Territory of New Mexico,
January Term, 1903.

No. 984.

The Atchison, Topeka and Santa Fe Railway Co.,
Plaintiff in Error.

vs.

The Territory of New Mexico,
Defendant in Error.

Error to Third Judicial District Court.
Grant County.—Writ of Error.

H. L. WALDO,
R. E. TWITCHELL,
Attorneys for Plaintiff in Error.

Filed in my office December 6, 1902.
JAMES P. MITCHELL, Clerk.
By J. A. SHIPLEY, Deputy.

No. 985.

Supreme Court, Territory of New Mexico.
January Term, 1903.

108 Rio Grande, Mexico and Pacific Railroad Company,
Plaintiff in Error

vs.

Territory of New Mexico,
Defendant in Error.

Error to Third Judicial District Court,
Grant County.—Writ of Error.

H. L. WALDO,
R. E. TWITCHELL,
Attorneys for Plaintiff in Error.

Filed in my office December 6, 1902.
JAMES P. MITCHELL, Clerk.
By J. A. SHIPLEY, Deputy.

No. 986.

Supreme Court, Territory of New Mexico.
January Term, 1903.

Silver City, Deming and Pacific R. R. Co.,
Plaintiff in Error.

vs.

Territory of New Mexico,
Defendant in Error.

Error to the Third Judicial District Court.
Grant County.—Writ of Error.

H. L. WALDO,
R. E. TWITCHELL,
Attorneys for Plaintiff in Error.

Filed in my office December 6, 1902.
JAMES P. MITCHELL, Clerk.
By J. A. SHIPLEY, Deputy.

Filed in my office December 4, 1902.
JAMES P. MITCHELL, Clerk.
By JOHN LEMON, Deputy.

109 In the District Court, Third Judicial District, County of Grant and Territory of New Mexico.

Territory of New Mexico, Plaintiff. versus. The Atchison, Topeka and Santa Fe Railway Company, Defendant,	)))))	No. 3425. Consolidated.
Territory of New Mexico, Plaintiff. versus. The Rio Grande, Mexico and Pacific Railroad Company, Defendant.	)))))	No. 3457.
Territory of New Mexico, Plaintiff. versus. The Silver City, Deming and Pacific Railroad Company, Defendant.	)))))	No. 3458.

Be it remembered, that pursuant to the stipulation of the parties to the above entitled causes, on the trial thereof, a jury having been waived, the following proceedings were had, to-wit:

In the District Court, Third Judicial District, County of Grant, Territory of New Mexico.

Territory of New Mexico, Plaintiff.	)	Nos.
versus.	)	3425, 3457,
The A. T., & S. F. Railway Company,	)	3458.
The R. G., M. & P. Railroad Company and	)	
The S. C. D. & P. Railroad Company, Defendants,	)	

110 AGREED STATEMENT OF FACTS.

1.

Within the time required by law, for the years 1895, 1896 and 1897, respectively, all the property of the above named defendants, as well as all he property of the Atchison, Topeka and Santa Fe Railroad Company, situate in the County of Grant and Territory of New Mexico, on the first day of March in each of the said years 1895, 1896 and 1897, was, by the proper representatives of said companies duly listed and returned to the proper assessing officers of the said County of Grant for the purposes of taxation for said years, respectively, copies of which said returns, so made as aforesaid, are hereto attached, marked Exhibits "A," "B," and "C," and made a part of this statement.

2.

The Board of County Commissioners in and for the said County of Grant, sitting as a Board of Equalization, according to law, at the times required by law, in and during the years 1895, 1896 and 1897, raised the return of the said defendants and the said Atchison, Topeka and Santa Fe Railroad Company, so made as aforesaid, as by the record of the proceedings of the said Board of County Commissioners, in and for the years 1895, 1896 and 1897, more fully appears, which said record is hereto attached and marked Exhibit "D" and made a part hereof.

3.

That within the time required by law, an appeal from the action of the Board of County Commissioners was taken in and during the said years 1895, 1896 and 1897 respectively, by said defendants and each of them and the Atchison, Topeka and Santa Fe Railroad Company, to the Territorial Board of Equalization, which said last named Board, after argument and due consideration of said appeals for the said years respectively, did act thereon and sustain said appeals, as will more fully appear from the certified
111 copy of the proceedings of the said Territorial Board of Equalization, held during said years relative to appeals and

fixing the valuation upon all railroad property in the Territory of New Mexico for said years, which said certified copy is hereto attached, marked Exhibit "E" and made a part hereof.

4.

That the Board of County Commissioners and the several assessing officers of the County of Grant were duly notified of the said action of the Territorial Board of Equalization upon the several appeals of the said defendants and the said Atchison, Topeka and Santa Fe Railroad Company.

5.

Within the time required by law, in and during the years 1895, 1896 and 1897, the said Board of County Commissioners made the annual levy upon all property in the said County of Grant, including the property of the said defendants and the Atchison, Topeka and Santa Fe Railroad Company, for the purposes of taxation for each of the said years, respectively, which said assessment and levy for the year 1895 is in the words and figures following, to-wit:

"Territory of New Mexico, County of Grant,
"Office of the Board of County Commissioners.

"At a regular session held on the 8th day of November, A. D. 1895, it was ordered by the Board of County Commissioners of said County, that the preceding assessment roll and each and every assessment therein contained, as originally returned and assessed, or as shown thereon to have been revised and corrected by the Board, be and the same is hereby approved, and that a tax of 6 05-100 mills on the dollar for county purposes and of 2 1-2 mills on the dollar for school purposes and of 3 20-100 mills on the dollar for court fund and 3 50-100 mills for judgment, A. B. Laird, and for various Territorial funds, to-wit:

"For Territorial purposes, 6 mills on the dollar.

112 "For Territorial institution fund, 1 75-100 mills on the dollar.

"For cattle indemnity fund, 50-100 mills on the dollar is hereby levied upon all the property therein returned assessed liable to taxation.

"In witness whereof—

"Attest:

"THOMAS FOSTER,
"Chairman of the Board.

"E. M. YOUNG, Probate Clerk.
(Seal)

"A. J. CLARK.
"J. N. UPTON,
Commissioners."

And which said levy for the year 1896, as appears by the record of the proceedings of said Board of its session held on the 5th day of October, 1896, is in words and figures following, to-wit:

"Territory of New Mexico, County of Grant,
"Office of the Board of County Commissioners.

"At a regular session held on the 5th day of October, A. D. 1896, it is ordered by the Board of County Commissioners of said County: That the preceding assessment roll and each and every assessment therein contained, as originally returned and assessed, or as shown thereon to have been revised and corrected by the Board, be and the same is hereby approved:—

"And that a tax of 6 55-100 mills on the dollar for county purposes and of 2 1-2 mills on the dollar for school purposes, 4 50-100 mills on the dollar for judgments, 3 mills on the dollar for special school precinct No. 11, 3 mills on the dollar for special school precinct No. 24, and of 3 20-100 mills on the dollar for court fund, and 8 25-100 mills for various Territorial funds, to-wit:

"For Territorial purposes, 6 mills on the dollar.

"For Territorial institution fund, 1 75-100 mills on the dollar.

"For cattle indemnity fund, 50-100 mills on the dollar is
113 hereby levied upon all the property therein returned assessed liable to taxation.

"In witness whereof:

"THOMAS FOSTER,
"Chairman of the Board.

"Attest: E. M. YOUNG, Probate Clerk.
(Seal)

"J. N. UPTON,
"A. J. CLARK,
"Commissioners."

And which levy for the year 1897, as appears by the record of the proceedings of said Board of its session held on the 7th day of September, A. D. 1897, is in the words and figures following, to-wit:

"Territory of New Mexico, County of Grant,
"Office of the Board of County Commissioners.

"At a regular session held on the 7th day of September, A. D. 1897, it is ordered by the Board of County Commissioners of said County:—

"That the preceding assessment roll and each and every assessment therein contained, as originally returned and assessed, or as shown thereon to have been revised and corrected by the Board, be and the same is hereby approved:—

"And that a tax of 16 50-100 mills on the dollar for county purposes and 2 1-2 mills on the dollar for school purposes and of 3 20-100 mills on the dollar for court fund, and 12 30-100 mills for various territorial funds, to-wit:

"Sheep and goat sanitary, 1 50-100 mills per head.

"For Territorial purposes, 7 mills on the dollar.

"For Territorial institutions, 2 50-100 mills on the dollar.
"For special tax for the 49th fiscal year, 1 1-4 mills on the dollar.
"For cattle indemnity fund, 50-100 mills on the dollar.
"For Capitol contingent sinking fund, 1-2 mill on the dollar.
"And a further special tax of a mill on the dollar of the appraised value of all cattle.
"For the support of the public schools a levy is made by me in conformity with 'An Act to establish public schools in the
114 Territory of New Mexico, approved February 12, 1891, of 2 50-100 of one mill on the dollar upon all taxable property in the Territory, to be collected and paid into the different county treasuries as provided by law.
"In witness whereof:—
(Seal) "A. J. CLARK,
"Chairman of County Commissioners.
"MARTIN MAHER,
"H. J. HICKS,
"Commissioners.
"Attest: E. M. YOUNG, Probate Clerk, etc."

6.

That the only assessment against the property of the said defendants, or that of the Atchison, Topeka and Santa Fe Railroad Company, or any or either of them, appearing upon the assessment roll or tax roll or list of the County of Grant, in and for the years 1895, 1896 and 1897, respectively, is in the words and figures, as follows, to-wit:

Name of property	
Owner. Atchison, Topeka & Santa Fe R. R.	
Description	
Real Estate. Roadbed, track, right-of-way, rolling stock, etc.	
Total value land and improvements—	
R. G. M. & P.	
10.98 miles main line and sidings	$ 16,175
6 miles telegraph	5,549
S. C., D. & P.	
48.29 miles main line	313,885
1.67 miles sidings	3,340
48.29 miles telegraph	1,207
Value Personal Property	16,555
Fixed by County Commissions	435,070
Final Assessed Value Pd. $423,061	
Territorial	

115	Territorial purposes.....	2,610 42	
	Territorial institutions...	761 37	
Tax			
School		1,087 68	
County	General	1,087 68	
	Court fund	1,392 22	
	Judgment	1,522 75	
	Interest bonds.....	1,087 68	
	Interest bonds	152 27	
	C. E.	27 54	
	R.	43 50	
	Special School		
	Precinct 3	20 00	
Tax	Special School		
	Precinct 11	635 27	
Amount due			
January 1st, 1896.....			5,330 94
Amount due			
July 1st, 1896.....			5,330 94
	Total tax		10,661 88

Amount paid on valuation as returned by defendants and sustained by the Territorial Board of Equalization:

January 1, 1896.....	4,452 48
July 1, 1896.....	4,452 00

1896.

Name of Property Owner—Atchison, Topeka and Santa Fe Railroad Company.

Real Estate.	Value of Land.	Total value Land and Improvements.
Rio Grande, Mexico and Pacific—		
1,098 miles of main track at $6,500....	$71,370 00	
7.10 miles side track at $2,500.....	17,750 00	
6 miles telegraph line.....	549 00	
		$89,669 00
116 Silver City, Deming & Pacific—		
48.29 miles main track at $6,500..	313,885 00	
2.14 miles side track at $2,500.....	5,350 00	
48.29 miles telegraph line.....	1,177 25	
		320 442 25
Rio Grande, Mexico & Pacific—		
Car repair shops, Deming.....	25 00	
Section house, etc.....	400 00	
Tool house	40 00	
Depot and hotel, 1-2 interest in.....	3,750 00	
Freight depot, etc.....	1,250 00	

Track scales	100 00	
Baggage room	150 00	
		5,715 00
Tenements Nos. 6 to 10—Whitney	600 00	
Coal chutes and bins	700 00	
Ice house	150 00	
Pump house	40 00	
Car repair shop	75 00	
Tank	300 00	
Tool house	40 00	
Master mechanic's office	125 00	
Stock yards	300 00	
Stone engine house	1,800 00	
Turntable & oil house	400 00	
		4,530 00
Tool house, section house, etc., at Crawford.	290 00	
Tank and Windmill	400 00	
		690 00
Depot, etc., Whitewater	300 00	
Depot, etc., Hudson	325 00	
		550 00
Ice house, etc	250 00	
Dwelling, etc., Silver City	250 00	
Tool house	40 00	
117 Eng. Ho. Tab. & Coal bins	900 00	
Depot, etc	600 00	
Hose Hs. & Water tank	310 00	
		2,100 00
Stock yards	250 00	
Tank & windmill, stock yds	400 00	
		650 00
Value of personal property—249 21 6 14 55 Fixed by Assessor		$426,185 25
Fixed by Territorial Board of Equalization		$426,185 25
Territorial purposes	$2,557 11	
Territorial institutions	745 82	
School	1,065 47	
General	1,065 47	
Court fund	1,363 79	
Judgment	1,917 83	
Interest on bonds, 1889	1,278 56	
Interest on bonds, 1883	149 16	
Contingent expenses	213 09	
Road	42 62	
Bounty	42 62	
Special school	615 35	
Total		11,056 89

Amount due January 1, 1897	5,528 45
Amount due July 1, 1897	5,528 44
Amount paid January 1, 1897, Less judgment fund tax	4,569 53
Amount paid July 1, 1897 Less judgment fund tax	4,569 53

1897.

Name of Property Owner.—Atchison, Topeka and Santa Fe Railroad Company.

Real Estate.—Rio Grande, Mexico & Pacific, Silver City, Deming & Pacific.

Description.—Same as that found in return.

	Valuation fixed by County Commissioners	$432,021 45
118	Territorial purposes	3024.1502
	Territorial institutions	885.6440
	Special tax	540.9268
	Capitol contingent sinking fund	216.0107
	School	1080.0536
	General	1728.0858
	Court fund	1382.4686
	Judgment	1944.0965
	Interest on bonds, 1883	1944.0965
	Interest on bonds, 1889	172.8086
	Interest on bonds, 1889	1123.2558
	Roads	216.0107
	Special school	632.2926
		14889.0904
	Amount due January 1, 1898	7444.5002
	Amount due July 1, 1898	7444.5002

January 1st, 1898. Payment of $4,953.64 on valuation 329,331.45 as returned by said company less county judgments.

July 1st, 1898. Payment of $4,953.64 on valuation as returned by said Company 329,331.45 less County judgments.

7.

That within the time required by law, prior to the attaching of any penalty the said defendants and the said Atchison, Topeka and Santa Fe Railroad Company paid to the Collector of Grant County, upon the valuation returned by said Companies all taxes levied and assessed against said Companies or any or either of them, in and by the levy of the Board of County Commissioners made on the 8th day of November, A. D. 1895, to-wit: The sum of $8,904.96, except

the sum of $1,522.75, which said last named sum was a tax levied for and on account of a certain judgment against the Board of County Commissioners of the County of Grant and in favor
119 one, A. B. Laird, for the payment of which said judgment, the said Board of County Commissioners did, at the time of the making of the regular annual levy on the 8th day of November, 1895, make a special levy of three and one-half mills upon all the taxable property in said county and as contained in the assessment roll of said County, approved November 8th, 1895.

And the amount in dispute between plaintiff and said defendants and the said Atchison, Topeka and Santa Fe Railroad Company, for the said year of 1895 is the sum of $1,480.71, levied on account of a judgment against said County of Grant, rendered in favor of Andrew B. Laird, on the return made by the defendants, in the sum of $276.21, total taxation on the valuation of $12,011.00, the amount of raise in valuation made by the said Board of County Commissioners on the property described in Schedules 2 and 3 of the property returns of the defendants for the year 1895.

8.

That the said judgment against the Board of County Commissioners of the County of Grant, in favor of the said A. B. Laird, was rendered by the District Court in and for the 3rd Judicial District within and for the said County of Grant, and was for and on account of certain claims allowances and approved accounts belonging to the said A. B. Laird, against the said County of Grant and were due him for services rendered, supplies furnished and materials supplied to the said County of Grant in and during years prior to the date of filing of the suit in which the said judgment was rendered, all of which said claims, allowances and approved accounts were a part of the current general expense of the said County of Grant during the years in which the same were ordered and incurred, and that the said judgment and the claims and allowances did not arise upon nor include any charge against the said County of Grant for or on account of any bonded debt of said County nor upon any coupon of any bond theretofore issued by the said County of Grant, nor
120 for any interest upon said bond or coupon, but said judgment was simply and solely rendered for and on account of claims, allowances and approved accounts of claims due and owing said A. B. Laird for services rendered of supplies and materials furnished by him to the said County of Grant in and during a period prior to the filing of the suit in which the said judgment was rendered.

9.

That within the time required by law and prior to the attaching of any penalty, the said defendants and the said Atchison, Topeka and Santa Fe Railroad Company, paid to the collector of the County

of Grant, upon a valuation of the property of said companies as fixed by the Territorial Board of Equalization, to-wit: A valuation of $426,185.25, all taxes levied and assessed against said companies or any or either of them in and by the levy of the Board of County Commissioners made on the 5th day of October, 1896, to-wit: The sum of $9,139.06, except the sum of $1,917.83, which said last named sum was a tax levied for and on account of and for the payment of certain judgments against the Board of County Commissioners of the County of Grant and in favor of certain judgment creditors of the said County of Grant, for the payment of which said judgments, the Board of County Commissioners did, at the time of the making of the regular annual levy on the 5th day of October, A. D. 1896, make a special levy of four and one-half mills upon all the taxable property in said county and as contained in the assessment roll of said county, approved October 5th, 1896.

10.

That the said judgments against the Board of County Commissioners of the County of Grant, and each of them, in favor — the said judgment creditors were rendered by the District Court in and for the 3rd Judicial District sitting within and for the County of Grant, and were each for and on account of certain claims, allow-
121 ances and approved accounts, the property of the said creditors, against the said County of Grant, and were claims, allowances and approved accounts theretofore made and issued to various people by the said Board of County Commissioners for and on account of services rendered and supplies and materials furnished to the said County of Grant, in and during certain years prior to the date of the filing of the suits in which the said judgments were rendered, all of which said claims, allowances, approved accounts and judgments were a part of the current general expense of the said County of Grant during the years in which the same were ordered and incurred and that the said judgments nor any or either of them, did not arise upon nor include any charge against the said County of Grant for or on account of any bonded debt of the said County nor upon any coupon or any bond theretofore issued by the said County of Grant nor for any interest upon said bond or coupon, but the said judgments were simply and solely rendered for and upon account of claims, allowances and approved accounts due and owing to the said creditors for services rendered or supplies or materials furnished to the said County of Grant in and during a period prior to the filing of the suits in which the said judgments were rendered.

11.

That within the time required by law and prior to the attaching of any penalty, the said defendants paid to the collector of the County of Grant upon the valuation returned by the said companies a valua-

tion of $329,331.45 all taxes levied and assessed against said companies, or any or either of them, in and by the levy of the Board of County Commissioners, made on the 7th day of September, 1897, to-wit: The sum of $9,907.28 except the sum of $1,944.0965, which said last named sum was a tax levied upon an assessment made by the Board of County Commissioners of said county in the sum of $432,021.45, for and on account of and for the payment of
122 certain judgments against the Board of County Commissioners of the County of Grant and in favor of certain judgment creditors of said county for the payment of which said judgments the Board of County Commissioners did, at the time, of the making of the regular annual levy, on the 7th day of September, 1897, and included in the levy for county purposes, which latter was sixteen and one-half mills upon the dollar, make a levy upon all the taxable property in said county, and as contained in the assessment roll of said county, approved September 7th, 1897.

And that the amount in dispute between the plaintiff and defendants and the said Atchison, Topeka and Santa Fe Railroad Company, is the sum of $1,481.96, levied on account of the aforesaid judgments on the valuation of property paid on by the defendants, and the sum of $3,283.14, total taxation on the valuation $96,580.00, the amount of raise by said Board of County Commissioners in the valuation of the property described in Schedule No. 1 of defendant's property return for the said year, and the sum of $216.64, total taxation on the valuation $6,110.00, the amount of raise by the said Board of County Commissioners in the valuation on the property described in Schedules Nos. 2 and 3 of defendant's property return for said year.

12.

That the said judgments against the Board of County Commissioners of the County of Grant, and each of them, in favor of the said judgment creditors, were rendered by the District Court in and for the 3rd Judicial District, sitting within and for the County of Grant, and were each for and on account of certain claims, allowances and approved accounts against the County of Grant, and were claims, allowances and approved accounts theretofore made and issued to various people by the said Board of County Commissioners for and furnished to the said County of Grant in and during
123 certain years prior to the date of the filing of the suits in which the said judgments were rendered, all of which said claims, allowances, approved accounts and judgments were a part of the current general expenses of the said County of Grant during the years in which the same were ordered and incurred and that the said judgments, nor any or either of them, did not arise upon nor include any charge against the said County of Grant for or on account of any bonded debt of the said county nor upon any coupon of any bond theretofore issued by the said county nor for any interest upon

said bond or coupon, but the said judgments were simply and solely rendered for and on account of claims, allowances and approved accounts due and owing the said creditors by the said county for services rendered or supplies and materials furnished to the said County of Grant in and during the period prior to the filing of the suits in which the said judgments were rendered.

13.

That each and every act of said Territorial Board of Equalization, with reference to the valuation of the property of said defendants, as shown by the said Exhibit "E" was made pursuant to the provisions of an act of the Legislative Assembly of the Territory of New Mexico entitled "An Act Providing for a Board of Equalization and prescribing its duties, approved February 23, 1893, and the several acts amendatory thereof and supplemental thereto.

14.

That at the meeting of the Board of County Commssioners of the said County of Grant, sitting as a board of equalization, held on the .....day of..... A. D. 1897, the said Board of County Commissioners raised the return of the said defendants from a total valuation of $329,331.45 to a total valuation of $432,321.45, a part of which raise in valuation consisted in a raise of $2,000.00 per mile for 48.29 miles of track of the said defendants,
to-wit: The Silver City, Deming and Pacific Railroad, or
124 a total raise upon track of $96,580.00 and upon superstructures, buildings, etc., of $6,110.00.

That within the time required by law an appeal was taken and allowed from the aforementioned action of the said Board of County Commissioners of the County of Grant in making said raise, by the said defendants to the Territorial Board of Equalization, by which body said appeal was duly sustained and allowed and the valuation fixed at the valuations returned by the said defendants for the said year, as appears from the order of the said Board of Equalization of the Territory, found in Exhibit "E" hereto attached, and which order is as follows, viz:

"SANTA FE, N. M., September 20, 1897.

In the matter of the appeal of the A., T. and S. F. R. R. from Grant County, New Mexico, said appeal was continued to the January meeting of this Board, on account of the inability of the District Attorney for said County to attend such meeting, who desired to be heard in the case."

"SANTA FE, NEW MEXICO, January 10, 1898.
Afternoon Session, 2 P. M.

The Board met pursuant to adjournment, all members present as this morning.

In the matter of the appeal of the Silver City, Deming and Pacific Railroad of Grant County, New Mexico, which was continued for the September meeting of 1897, after receiving the opinion of the Solicitor General of New Mexico and carefully considering all evidence presented to said Board, the Board sustains the appeal of the A., T. and S. F. R. R. and places the value of said branch line (the same having been shown by proof brought before this Board that the same is a branch line and shall be classified as such) and the Board instructs the Assessor of said County to correct his tax roll in accordance with such finding."

15.

That the levy made by the Board of County Commissioners of Grant County for the year 1895 for general county purposes was 6 05-100 mills exclusive of the levy of 3 50-100 mills for the payment of the judgment of A. B. Laird.

That the levy made by the Board of County Commissioners of Grant County for the year 1896 for general county purposes was 6 55-100 mills, exclusive of the levy of 4 50-100 mills for the payment of judgments.

That the levy made by the Board of County Commissioners of Grant County for the year 1897 for general county purposes was 16 50-100 mills inclusive of the levy for the payment of judgments.

16.

That the assessment and tax rolls of the County of Grant for the years 1895, 1896 and 1897, containing the assessments and taxes levied against the property of the defendants and the Atchison, Topeka and Santa Fe Railroad Company, as appears herein, were and are the assessment and tax rolls of said county for said years, made out by the assessor, approved by the Board of County Commissioners and delivered to and received by the collector of taxes of the said county in and for said mentioned years 1895, 1896 and 1897.

17.

That the total property valuation, as shown by the assessment rolls of the said County of Grant for the year 1892 is the sum of $4,222,113.00.

That the amount of the levy for the general fund, at the rate of 2 1-2 mills is the sum of $10,555.28, which said last named sum, together with the sum of $1,790.16, levied as special deficit fund in the year 1894 to cover the unpaid indebtedness of said County of

Grant for the year 1893, formed the general fund applicable to the payment of county expenses for the year 1893.

That of said fund there was collected in the said year 1893, for the payment of county expenses, the sum of $7,793.79, leaving a deficit of $4,551.65 uncollected in the general fund in the year 1893.

That the total property valuation, as shown by the assessment rolls for the said County of Grant for the year 1893 is the sum of $4,129,467.00.

126 That the amount of levy for the general fund, at the rate of 2 1-2 mills, is the sum of $10,323.66, which said last named sum together with the sum of $1,724.59, levied in the year 1895 as a special deficit, to cover the indebtedness unpaid in the year 1894, formed a general fund applicable to the payment of county expenses for the year 1894, a total amount applicable to such indebtedness of $12,113.82, of which sum there was duly collected in the year 1894, from general fund, and, in the year 1896, for the special deficit fund aforesaid, the sum of $8,328.75, leaving a deficit of $3,719.50 uncollected in the general fund in the year 1894.

That the total property valuation, as shown by the assessment rolls of 1894 for the said County of Grant is the sum of $3,580,232.00.

That the amount of levy for the general fund, at the rate of 2 1-2 mills is the sum of $8,950.58, which said last named sum together with the sum of $1,667.25, levied in the year 1895 as a special deficit to cover the indebtedness unpaid in the year 1894, formed a general fund applicable to the payment of county expenses for the year 1895, of which sum there was collected in the year 1895 from the general fund and in the year 1897, in the special deficit fund aforesaid, the sum of $7,122.07, leaving a deficit of $3,495.76 uncollected in the general fund in the year 1895.

That the total property valuation, as shown by the assessment rolls of said County of Grant for the year 1895 is the sum of $3,449,180.00.

That the amount of levy for the general fund, at the rate of 2 1-2 mills, is the sum of $8,622.95.

That there was no special deficit fund levied in said County of Grant for the said year, and that the said sum of $8,622.95 formed the general fund applicable to the payment of county expenses for the year 1896.

That of said fund there was collected in the said year 1896 the sum of $6,285.46, leaving a deficit of $2,337.49 uncollected in the general fund in the year 1896.

127 That the total property valuation as shown by the assessment rolls of said County of Grant for the year 1896 is the sum of $3,334,488.00.

That the amount of the levy for the general fund, at the rate of 2 1-2 mills is the sum of $8,336.22, which said last mentioned sum formed the general fund applicable to the payment of county expenses for the year 1897.

That of said fund there was collected in the said year 1897, for the payment of county expenses, the sum of $6,300.58, leaving a deficit of $2,035.64 uncollected in the general fund for the year 1897.

18.

That the amount of the judgment aforesaid rendered in favor of Andrew B. Laird against the said County of Grant was the sum of $10,434.34, and the judgment levy made by the said Board of County Commissioners in the year 1895 was made for the payment of the said judgment.

That the judgment made in the year 1896 by said Board of County Commissioners was made for the payment of judgments rendered against said County of Grant in favor of the following named persons for the following amounts, respectively, to-wit:

Charles G. Bell	$ 599.57
Henry S. Gillett et al	1,838.01
Silver City National Bank	11,221.73
A total sum of	$13,659.31

20.

That the judgment levy made in the year 1897 by said Board of County Commissioners was made for the payment of judgments rendered against said County of Grant in favor of the following named persons for the following amounts, respectively, to-wit:

Baylor Shannon	$ 6,397.60
Moorman and Company	3,643.12
Kate Thomas	436.58
128 Seaman Field	543.62
A total sum of	$11,020.92

21.

That all of the indebtedness upon which the said judgments mentioned in Paragraphs 18, 19 and 20 hereof were obtained accrued on account of the current expenses of said county during the years 1893 to 1897 inclusive and were payable out of the general fund of said County of Grant for the said years.

22.

That such indebtedness accrued on account of:

First: Salaries of the Probate Clerks, Probate Judges, County Commissioners, County Treasurer, District Attorney, County Jailers and Guards in the County Jail.

Second: Expenses of regular Territorial elections as fixed by law.

Third: Fees of the Justices of the Peace for the various precincts of said county; mileage of Constables for the various precincts; mile-

age for Sheriffs of said county and for feeding prisoners in the county jail.

Fourth: Postage and Printing supplies to the County of Grant.

Fifth: Transportation of insane persons committed to the Territorial asylum by the District Court of said County.

Sixth: Miscellaneous expenses incurred by said county in the management and discharge of its municipal affairs.

23.

That the amount of indebtedness so incurred by said County of Grant, forming a part of said judgments and of the levies made for the payment of said judgments under the several classes of Paragraph 22 hereof is as follows, to-wit:

	Class 1	$ 9,004.90
129	Class 2	781.51
	Class 3	15,790.85
	Class 4	3,309.81
	Class 5	362.32
	Class 6	5,865.18

24.

That the percentage of the levy made in 1895 to cover the indebtedness under

Class 1 Paragraph 22 is	.08647
Class 2, Paragraph 22 is	.00000
Class 3, Paragraph 22 is	.83242
Class 4, Paragraph 22 is	.05758
Class 5, Paragraph 22 is	.01527
Class 6, Paragraph 22 is	.00826

That the percentage of the levy made in the year 1896 to cover the indebtedness under

Class 1 is	.49889
Class 2 is	.01735
Class 3 is	.05732
Class 4 is	.10747
Class 5 is	.00000
Class 6 is	.31897

That the percentage of the levy made in the year 1897 for the payment of the indebtedness under

Class 1 is	.11686
Class 2 is	.04942
Class 3 is	.57365
Class 4 is	.11261
Class 5 is	.01876
Class 6 is	.12868

25.

That the amount of the indebtedness for the year 1893 covered into the aforesaid judgments, for which the levies for the years 1895, 1896 and 1897 respectively, were made, is the sum of $712.41, and that the deficit as heretofore shown in the general fund for that year was the sum of $4,551.65, showing an excess in the levy
130 for the general fund for the said year above the indebtedness covered by judgments of $3.730.24.

That the amount of the indebtedness for the year 1894 covered in the aforesaid judgments, for which said levies were made is the sum of $15,597.73 and that the deficit as heretofore shown in the general fund for that year was the sum of $3,719.50, showing a deficit in the general fund for that year above the indebtedness covered by said judgments of $11,878.23.

That the amount of the indebtedness for the year 1895 covered in aforesaid judgments for which said levies were made is the sum of $7,079.75 and that the deficit, as heretofore shown in the general fund for that year was the sum of $3,495.76, showing deficit in the general fund for that year above the indebtedness covered by said judgments of $3,583.99.

That the amount of the indebtedness for the year 1896 covered in the aforesaid judgments for which said levies were made is the sum of $11,218.98 and that the deficit as heretofore shown in the general fund for that year was the sum of $2,337.49, showing a deficit in the general fund for that year above the indebtedness covered by said judgments of $8,880.49.

That the amount of indebtedness for the year 1897 covered and the aforesaid judgments for which said levies were made is the sum of $505.70, and that the deficit as heretofore shown in the general fund for that year was the sum of $2,035.64, showing an excess in the general fund above the indebtedness covered by said judgments of $1.529.94.

That the Territorial Board of Equalization, at their regular meetings held for that purpose in and during said years 1895, 1896 and 1897, fixed the valuations upon all railroad property in the Territory of New Mexico, and that Exhibit "E" hereto attached, is a correct copy of the proceedings of the said Board in that behalf.

That within the time required by law the defendants duly appealed from the decision of the Board of County Commis-
131 sioners of the County of Grant in raising the valuation placed upon defendant's property in said County in and for the year 1897, which said appeals are hereto attached and made a part hereof, marked Exhibit "F," which appeals were acted upon by the Territorial Board of Equalization as stated in Paragraph 14 hereof.

Territory of New Mexico,)
County of Grant.)
In the District Court.)

The within and foregoing statements of facts, with the several Exhibits thereto attached, in the above entitled cases is hereby agreed to be true and correct, and it is further agreed that a jury may be waived and that the Court may try and pass upon the issues in said cases upon the said agreed statement of facts and the several Exhibits there to attached.

(Signed) WILLIAM H. H. LLEWELLYN,
District Attorney.

(Signed) A. H. HARLLEE,
(Signed) R. P. BARNES,
Attorneys for Plaintiff.

(Signed) R. E. TWITCHELL,
Attorney for Defendants.

EXHIBIT "A."

1895.

Schedules Showing

The personal property belonging to the Rio Grande, Mexico and Pacific Railroad, the Silver City, Deming and Pacific Railroad, corporations existing under the laws of the Territory of New Mexico, and leased lines of the Atchison, Topeka and Santa Fe Railroad Company in Grant County, Territory of New Mexico, on the first day of March, 1895.

Schedule No. 1.

Showing roadbed, track, telegraph line, franchises, etc., in Grant County.

132 The Rio Grande, Mexico and Pacific Railroad.—

	Valuation.
Main track, 10.98 miles	$71,370
Side track, 6.47 miles	16,175
Telegraph, 6 wires	549
	$88,094

Silver City, Deming and Pacific Railroad.—

	Valuation.
Main track, 48.29 miles	$313,885
Sidetrack, 1.67 miles	3,340
Telegraph, 1 wire	1,207 25
Total	$318,432 25

Schedule No. 2.

Showing buildings, platforms, tanks, etc., in Grant County.

The Rio Grande, Mexico and Pacific Railroad.—

Deming.—

Car repair shop, 12x14, wood	$ 50 00		
Section house, 18x30, wood	300 00		
Tool house, 12x16, wood	40 00		
Hotel, etc., 1-2 interest, 40x162, wood	3,000 00		
Freight depot and platform, 30x175, wood	1,600 00		
Scales, 36' wood	125 00		
Baggage room, 1-2 int., 27x49, wood	150 00		
		$	5,265 00

Whitney.—

Tenements, Nos. 6 to 10, each, 18x28, wood	$ 600 00		
Coal chute and bins, 32x37, wood	1,100 00		
Ice house, 24x49, wood	175 00		
Pump house, 20x30, wood	150 00		
Car repair shop, 15x30, wood	75 00		
Tank, 24' wood	300 00		
Tool house, 12x16, wood	40 00		
133 M. M. office, 16x32, wood	125 00		
Stock yards, 100x305, wood	459 00		
Engine house and turntable, 8 stalls, stone	3,060 00		
Oil house, 20x28, stone	400 00		
		$	6,405 00
Total		$	11,680 00

Silver City, Deming and Pacific Railroad—

Crawfords.—

Tool house, 12x16, wood	$ 40 00		
Section house, 12x32, wood	200 00		
Tank and windmill, 20' wood	250 00		
		$	490 00

Hudson's.—

Depot and platform, 20x52, wood	200 00		
		$	200 00

Whitewater.—

Depot and platform, 25x40, wood	300 00		
Section house, 16x32, wood	200 00		
		$	500 00

Silver City.—

Two tanks and windmill, 20' wood	750 00		
Depot platform and tool house, 24x80, 12x16, wood	840 00		
Coach platform and coal bin, 6x141, 8x24, wood	105 00		

Stock yards and hose house, 100x229, 4x6, wood	610 00	
Engine house and turntable, 2 stalls, 54' wood	925 00	
		$ 3,230 00
Total		$ 4,420 00

Schedule No. 3.

Showing the value of track, bridge and building and water service, tools, office and station furniture, fuel, shop machinery and tolls, hand and push cars, material and supplies on hand, and
134 all other personal property in Grant County.

The Rio Grande, Mexico and Pacific Railroad.

Deming—		
Value of station	$ 324 00	
Total		$ 324 00

Silver City, Deming and Pacific Railroad.

	Value of station.	
Deming	$ 14 00	
Crawfords	17 00	
Hudson's	11 00	
Whitewater	21 00	
Silver City	48 00	
Total		$ 111 00

No return was made to Silver City, but property was assessed at $30,065.

EXHIBIT "B."

1896.

Schedule Showing

The personal property belonging to the Rio Grande, Mexico and Pacific Railroad, the Silver City, Deming and Pacific Railroad, corporations existing under the laws of the Territory of New Mexico and leased lines of the Atchison, Topeka and Santa Fe Railroad Company, in Grant County, Territory of New Mexico, on the first day of March, 1896.

Schedule No. 1.

Showing roadbed, tracks, franchises, telegraph, etc., in Grant County.

The Rio Grande, Mexico and Pacific Railroad.—

	Valuation.
Main track, 10.98 miles	$ 71,370 00
Sidetrack, 7.10 miles	17,750 00
Telegraph 6 wires	549 00
	$ 89,669 00

135 Silver City, Deming and Pacific Railroad.—

	Valuation.
Main track, 48.29 miles	$313,885 00
Sidetrack, 2.14 miles	4,280 00
Telegraph, 1 wire	1,207 25
	$319,372 25

Schedule No. 2.

Showing depots, tanks, buildings, etc., in Grant County.

The Rio Grande, Mexico and Pacific Railroad.—

Deming.—

Car repair shop, 12x14	$ 25 00	
Section house, etc., 18x30	400 00	
Tool house, 12x16	40 00	
Depot and hotel, 1-2 interest, 40x162	3,750 00	
Freight depot, 1-2 interest, 30x175	1,250 00	
Track scales, 1-2 interest, 60 tons	100 00	
Baggage room, 1-2 interest, 27x49	150 00	
		$5,715 00

Whitney.—

Tenements Nos. 6 to 10 each, 18x28	$ 600 00	
Coal chute and bins, 31x37	700 00	
Ice house, 24x49	150 00	
Pump house, 20x30	40 00	
Car repair shop, 15x30	75 00	
Tank, 24'	300 00	
Tool house, 12x16	40 00	
Master mechanic's office, 16x32	125 00	
Stock yards, 100x305	300 00	
Stone engine house, 8 stalls, 52'	1,800 00	
Stone oil house, 20x28	400 00	
		$4,530 00
Total		$10,245 00

Silver City, Deming and Pacific Railroad.—

Crawfords.—

Tool house, 12x16	$ 40 00	

136 Total $3,665 00

East of Silver City—

Stock yards, 100x229	$ 250 00	
Tank and windmill, 20'	400 00	
		$ 650 00
Total		$4,315 00

Schedule No. 3.

Showing the value of track, bridge and water service, tools, office and depot furniture, shop machinery and tools, hand and push cars, fuel on hand, material and supplies and all other personal property in Grant County.

The Rio Grande, Mexico and Pacific Railroad.—

Deming—Value of station	$ 324 00	
		$ 324 00

Silver City, Deming and Pacific Railroad.—

Crawfords—Value of station	$ 21 00	
Section house, etc., 16x32	250 00	
Tank and windmill, 20'	400 00	
		$ 690 00

Hudson's.—

Depot, etc., 20x52	$ 325 00	
		$ 325 00

White Water.—

Depot, etc., 25x40	$ 300 00	
Section house, etc., 16x32	250 00	
		$ 550 00

Silver City.—

Dwelling, etc., brick, 16x123	$ 250 00	
Tool house, 12x16	40 00	
Engine house, 2 stalls and turntable, 54' and coal bin, 6x27	900 00	
Depot, etc., 24x80	600 00	
Hose house, 4x6	10 00	
Water tank, 20'	300 00	
		$2,100 00
137 Whitewater—Value of station	14 00	
Hudson's—Value of station	6 00	
Silver City—Value of station	55 00	
Total		$ 96 00

Statement of personal property located in the City of Silver City, Grant County, New Mexico, on May 1, 1896, returned for the purpose of assessment and taxation.

	Valuation.
2.03 miles of main track at $6,000 per mile	$12,180 00
2.03 miles telegraph line at $25 per mile	50 00
0.98 miles of sidetrack at $2,500 per mile	2,450 00
Dwelling, etc., brick, size 16x123 feet	250 00
Section, tool house, wood, size 12x16 feet	40 00
Engine house, 2 stalls, wood, and turntable, 54 ft. long and coal bin, wood, size 8x27 ft	900 00
Depot, platforms, etc., wood, size 24x80 feet	600 00
Hose house, wood, size 4x6 feet	10 00

Water tank, wood, size 16x20 feet	300 00
Tools, furniture, material and other property	55 00
Total value of all personal property	$16,835 00

EXHIBIT "C."

1897.

Schedules Showing

The personal property belonging to the Rio Grande, Mexico and Pacific Railroad, the Silver City, Deming and Pacific Railroad, corporations existing under the laws of the Territory of New Mexico, and leased lines of the Atchison, Topeka and Santa Fe Railroad Company, in Grant County, Territory of New Mexico, on the first day of March, 1897.

Schedule No. 1.

Showing roadbed, tracks, franchises, telegraph, etc., in Grant County.

The Rio Grande, Mexico and Pacific Railroad.—

138	Valuation.
Main track, 10.98 miles	$ 71,370 00
Sidetrack, 7.10 miles	17,750 00
Telegraph, 4 wires	439 20
Total	$89,559 20

Silver City, Deming and Pacific Railroad.—

	Valuation.
Main track, 48.29 miles	$217,305 00
Sidetrack, 2.14 miles	5,350 00
Telegraph, 1 wire	1,207 25
Total	$223,862 25

Schedule No. 2.

Showing depots, tanks, buildings, etc., in Grant County.

The Rio Grande, Mexico and Pacific Railroad.—

Deming.—

Car repair shop, 12x14	$ 25 00	
Section house, etc., 18x30	400 00	
Tool house, 12x16	40 00	
Depot, hotel, etc., 1-2 interest, 40x162	4,500 00	
Freight depot, 1-2 interest, 30x175	1,500 00	
Track scales, 1-2 interest, 60 tons	100 00	
Baggage room, 1-2 interest, 27x49	300 00	
		$6,865 00

Whitney.—		
Coal chute and bins, 12 pockets	$ 700 00	
Ice house, 24x49	150 00	
Pump house and coal bin, 20x30	40 00	
Car repair shop, 15x30	75 00	
Tank, 24'	300 00	
Tool house, 12x16	40 00	
Master mechanic's office, 16x32	125 00	
Stock yards, 190x305	350 00	
Engine house, turntable, 8 stalls, 54'	1,800 00	
Oil house, 20x28	400 00	
		$3,980 00
139 Total		$10,845 00
Silver City, Deming and Pacific Railroad.—		
Crawfords.—		
Tool house, 12x16	$ 40 00	
Section house, etc., 16x32	250 00	
Tank and windmill, 20'	400 00	
		$ 690 00
Hudson.		
Depot, etc., 20x52	$ 325 00	
		$ 325 00
Whitewater.—		
Depot, etc., 25x40	$ 300 00	
Section house, etc., 16x32	250 00	
		$ 550 00
Silver City.—		
Dwelling, etc., 16x123	$ 250 00	
Tool house, 12x16	40 00	
Engine house, 2 stalls, turntable 54' coal bin, 8x27	900 00	
Depot, etc., 24x80	600 00	
Hose house, 4x6	10 00	
		$1,800
East of Silver City.—		
Stock yards, 100x229	$ 250 00	
Tank and windmill, 20'	400 00	
		$ 650 00
Total		$4,015 00

Schedule No. 3.

Showing the value of track, bridge, building and water service, tools, office and depot furniture, shop machinery and tools, hand and push cars, fuel on hand, material and supplies and all other personal property.

Rio Grande, Mexico and Pacific Railroad.—

Deming—Value of station	$ 263 00	
Total		$263 00

140 Silver City, Deming and Pacific Railroad.—

Crawfords—Value of station	$ 19 00	
Whitewater—Value of station	16 00	
Hudson—Value of station	5 00	
Silver City—Value of station	47 00	
Total		$ 87 00

Silver City, Deming and Pacific Railroad.—

Statement of personal property located in the City of Silver City, Grant County, New Mexico, on May 1, 1897, returned for the purpose of assessment and taxation.

	Valuation.
2.03 miles of main track, at $4,500 per mile	$ 9,135 00
2.03 miles of telegraph line at $25 per mile	50 00
0.98 miles of sidetrack at $2,500 per mile	2,450 00
Dwelling, etc., size 16x123 feet	40 00
Engine house, 2 stalls, wood, turntable, 54 feet long, and coal bin, wood, size 8x27 feet	900 00
Depot, platforms, etc., wood, size 24x80 feet	600 00
Hose house, wood, size 4x6 feet	10 00
Tools, furniture, material and other property	47 00
1 locomotive	4,000 00
1 passenger coach	2,000 00
1 B. M. & E. car	1,500 00
Total value of all personal property	$20,982 00

EXHIBIT "D."

1895.

Special meeting of the Board of County Commissioners begun and held at Silver City, Grant County, New Mexico, June 3, 1895.

The following raises in assessments for the year 1895 of the following persons and property was made and the Clerk ordered to notify the parties so raised.

(The list which follows, includes)

A., T. & S. F. R. R. Co. roadbed from $6,500 to $8,000 per mile, pp. 362-365, of Record.

141 Regular meeting of the Board of County Commissioners begun and held at Silver City, Grant County New Mexico, the 8th day of July, 1895, pursuant to adjournment from July 1, 1895.

The Board met as a Board of Equalization and acted upon raises in assessments with the following result:

(Then follows a long list, including)

A., T. & S. F. R. R. Co., on roadbed. Not sustained.

A., T. & S. F. R. R. Co., on buildings, etc, Sustained. Pp. 366-369, Record of proceedings.

1896.

Special meeting of the Board of County Commissioners of Grant County, New Mexico, begun and held at Silver City, New Mexico, June 15, 1896, pursuant to adjournment from June 1, 1896. The following raises in assessments for the year 1896 of the following persons and property *was* made and the Clerk ordered to notify the parties so raised.

(The list then following includes)

A., T. & S. F. R. R.. On personal and real, from $11,894 to $20,470, p. 397 of Record.

Regular meeting of the Board of County Commissioners of Grant County, begun and held at Silver City, New Mexico, July 16, 1896.

The Board met as a Board of Equalization and acted upon raises in assessments with the following result:

(One in long list being)

A., T. & S. F. R. R. Raise to $20,470. Sustained. p. 401 of Record.

1897.

Special meeting of the Board of County Commissioners of Grant County, New Mexico, begun and held at Silver City, June 7, 1897.

Board met for the purpose of accepting and approving tax returns for the year 1897, whereupon the following raises in assessment for said year of the following persons and property was made, and the Clerk ordered to notify the persons so raised.

142 (List following includes)

A., T. & S. F. R. R. Co. On personal and real from $11,894 to $20,470.

A., T. & S. F. R. R. Co. Track, scales at Deming $200

A., T. & S. F. R. R. Co. Track S. C. D. & P. R. R from $4,500 to $6,500 per mile.

A., T. & S. F. R. R. Co. Add. pipe line Whitney to Deming $500. p. 449 of Record.

1897.

Regular meeting of the Board of County Commissioners of Grant County, begun and held at Silver City, N. M., July 12, 1897.

The Board met as a Board of Equalization and acted upon raises and assessments with the following result:

A., T. & S. F. R. R. Raise to $20,470 sustained. p. 453 of Record.

Territory of New Mexico,
Office of the Secretary.

Certificate.

I, Geo. H. Wallace, Secretary of the Territory of New Mexico, do hereby certify there was filed for record in this office at..... o'clock ..... M., on the Twelfth day of September, A. D. 1897, the order made by the Board of County Commissioners in the matter of the assessment of the Atchison, Topeka and Santa Fe Railway Company certified from the office of Probate Clerk..... and also, that I have compared the following copy of the same, with the original thereof now on file, and declare it to be a correct transcript therefrom and of the whole thereof.

In Witness Whereof, I have hereunto set my hand and affixed my official seal this Sixteenth day of May, A. D. 1899.

(Seal) (Signed) GEO. H. WALLACE,
Secretary of New Mexico.

143 EXHIBIT "D."

It appearing to the Board that the record of the assessment of taxes against the Atchison, Topeka and Santa Fe R. R. Co for the year 1897 is erroneous in that it does not correctly express the action of the Board in the premises it is ordered that the said record be and the same is hereby corrected so as to read as follows, to-wit:

Raised valuation at Deming, New Mexico.

	Returned at	Raised to
Section house, etc	$ 400 00	$ 600 00
Depot hotel (1-2 int.).....	4,500 00	5,000 00
Baggage room (1-2 int.)	300 00	350 00
Track scales (1-2 int.)..... ..	100 00	250 00
Raise- Valuations at Whitney.		
Coal chutes and bins	700 00	1,000 00
Ice house	150 00	300 00
Pump house and coal bin.....	40 00	100 00
Tank	300 00	500 00
Stock yards	350 00	500 00
Engine house and turntable.....	1,800 00	3,000 00
Oil house.....	400 00	800 00
Silver City.		
Depot, etc.....	600 00	1,200 00
Engine house, turntable and bins....	900 00	1,200 00
Totals	$10,540 00	$14,800 00

Additions			
Personal property, etc., at Silver City.....	$ 300 00		
Fuel, material, tools, office furniture and personal at Deming.....	2,000 00		
Pipe line from Whitney to Deming.....	500 00		
S. E. 1-4 Sec. 28, T. 23, R. 9 (Deming stock yard) part of above tract, 80 acres.....	100 00		
Total		$	2,900 00
Silver City, Deming and Pacific Railroad. Main line track.			
144 48.29 miles track, returned at $4,500 per mile..		$217,305	00
48.29 miles track raised to $6,500 per mile....		313,885	00
A raise of $2,000 per mile on 48.29 miles.....		$ 96,580	00

It is further ordered that a copy of this record as above changed be served upon said Atchison, Topeka and Santa Fe Railway Company.

Territory of New Mexico,)
) ss.
County of Grant.)

I, E. M. Young, Clerk of the Board of County Commissioners in and for said County and Territory, do hereby certify that the above and foregoing is a true and correct copy of the order made by the Board of County Commissioners on the 7th day of September, A. D. 1897, in the matter of the assessment of the Atchison, Topeka and Santa Fe Railway Co., as the same appears of record at pages 461, 462 and 463 in Book 2 of Commissioners' Minutes, records of Grant County, N. M.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said Board at my office in Silver City, N. M., this 9th day of September, A. D. 1897.

(Seal)

E. M. YOUNG,
Clerk of the Board of County Commissioners of Grant County, N. M.,
By J. A. SHIPLEY, Deputy.

(Endorsed)

Territory of New Mexico,)
) ss.
County of Grant.)

I, E. M. Young, Clerk of the Board of County Commissioners, in and for said County and Territory, do hereby certify that
145 on the 9th day of September, A. D. 1897, I executed the within by delivering a true copy to Conway and Hawkins, Att'ys.

E. M. YOUNG,
Clerk of the Board of County Commissioners of Grant County, N. M.
By J. A. SHIPLEY, Deputy.

Raises as made by County Commissioners upon the Schedules Two and Three of defendants' Tax returns for the year 1895.

Statement of Valuations,—1895.

Rio Grande, Mexico and Pacific Railroad Company.—

Schedule No. 2.

Deming and Whitney.— Raised valuation	from	to	
Section house	$300 00	$750 00	
Hotel, 1-2 interest	3,000 00	6,000 00	
Baggage and express room	150 00	500 00	
Tenement houses	600 00	1,000 00	
Coal chutes	1,100 00	1,500 00	
Ice house	175 00	300 00	
Pump house	150 00	300 00	
Tank	300 00	500 00	
Master mechanic's office	125 00	200 00	
Engine house, etc	3,000 00	4,000 00	
Oil house	400 00	800 00	
Total raise on Schedule No. 2, $6,550 00	$9,300 00	$15,850 00	
Total raise on Schedule No. 3, $3,476.00.	324 00	3,800 00	
Total raise on Rio G. Mex. & Pac. Railroad Co. is			$10,026 00

146 Schedule No. 2.

Silver City, Deming and Pacific Company— Raised valuation	from	to	
Silver City—			
Depot and platform	$840 00	$1,000 00	
Engine house and turntable	925 00	1,500 00	
Adobe and brick house, (additional)		400 00	
Whitewater—			
Depot and platform	300 00	500 00	
Section house	200 00	300 00	
Hudson—			
Depot, etc.	200 00	400 00	
Crawford—			
Section house	200 00	400 00	
Tank and windmill	250 00	400 00	
Total raise on S. City, Dem. & Pac.	$2,915 00	$4,900 00	$1,985 00

Supplemental to Exhibit "D."

Territory of New Mexico,
Office of the Secretary.

I have compared the following copy of the proceedings of the Territorial Board of Equalization relating to assessments and appeals of the Atchison, Topeka and Santa Fe Railway Company and branches for the years 1895, 1896, 1897, 1898, and part of 1899, with the original records thereof on file in this office, and I hereby certify the same to be a correct transcript therefrom, and of all matters relating thereto.

Witness my hand and the seal of the Secretary of the Territory, at Santa Fe, the Twenty-sixth day of April, one thousand eight hundred and ninety-nine.

(Seal) (Signed) GEO. H. WALLACE,
Secretary of New Mexico.

147 EXHIBIT "E."

Tuesday, Jan'y 8th, 1895.

The Board met pursuant to the adjournment of yesterday, there being present Messrs. Corbett, Baca, Kelley and Kennedy. There being a quorum present, the Board proceeded to fix a valuation of the various kinds of property throughout the Territory of New Mexico for the year 1895 and it was ordered and decided by said Board that all railroads of standard gauge which shall be subject to *to* taxation on the first day of March, 1895, in each county in this Territory through which they run and are situated and running north and east of the Atchison, Topeka and Santa Fe Railroad Depot in the City of Albuquerque shall be valued and assessed to the Company or corporation owning or operating the same at the rate of Seven Thousand Dollars ($7,000.00) per mile for each and every mile of main line; and at the rate of Twenty-five Hundred Dollars ($2500.00) per mile for each and every mile of switch and side track; and at the rate of Four Thousand Five Hundred Dollars ($4500.00) for each and every mile of branch lines; and that the assessment and value per mile on the above stated main line, branches and switches shall include all rolling stock of said Company or companies used thereon, consisting of locomotive engines and cars of all descriptions, but shall not include any buildings, tools or machinery used in repair shops or supplies or materials, nor telegraph lines.

It is further ordered and decided by this Board that all railroads of standard gauge situated south of the north end of the Atchison, Topeka and Santa Fe R. R. depot in the City of Albuquerque including the Atlantic and Pacific Railroad and all other standard gauge railroads south of said City of Albuquerque subject to taxation on the first day of March, 1895, shall be assessed and valued for the purpose of taxation to the company or companies owning

or operating the same in the county through which they run at the rate of Sixty-five Hundred Dollars ($6500.00) per mile for each and every mile of main line and at the rate of Forty-five
148 Hundred Dollars ($4500.00) per mile for all branch lines and at the rate of Twenty-five Hundred Dollars ($2500.00) per mile for all switches and side tracks connected therewith, which said valuation shall include all rolling stock used by said company or companies, consisting of locomotive engines and cars of all descriptions; but shall not include any buildings, tools or machinery used in repair shops, or other material or supplies; nor telegraph lines.

It is further ordered and decided that all narrow gauge railroads running and operating in the Territory of New Mexico and subject to taxation on the first day of March, 1895, shall be valued for the purpose of taxation in the counties through which they run at the rate of Twenty-five Hundred Dollars ($2500.00) per mile, for each and every mile of main and branch lines, and at the rate of Fifteen Hundred Dollars ($1500.00) per mile on all switches and side tracks connected therewith, which said valuation shall include all rolling stock consisting of locomotive engines and cars of all descriptions; but shall not include any buildings, tools or machinery used in repair shops or other material or supplies, nor telegraph lines. The Board adjourned until tomorrow morning at 10 o'clock a. m.

Wednesday, Jan'y. 9th, 1895.

It is further ordered and decided by the Board that all Telegraph lines which are completed and in operation on the first day of March, 1895, shall be valued and assessed to the company or companies operating the same in the counties through which they are operated at the rate of Twenty-five Dollars ($25.00) per mile for the first wire and Five Dollars ($5.00) per mile for each and every additional wire.

Santa Fe, New Mexico, Aug 6, 1895.
9 a. m.
Met pursuant to adjournment.
149 The full Board being present, the following proceedings were had.

In the matter of the appeal of the A., T. & S. F. Rd. Co. from the action of the Board of County Commissioners of Dona Ana County the raise was not sustained, on the buildings and improvements on line of road, but was overruled for the season that such assessment is different from that made by any other Board in the various counties of the Territory, and that for that reason is discriminating and inequitable.

Santa Fe, Jan. 2, 1896.

On this day at the hour of 2 o'clock p. m. pursuant to the statute in such case made and provided, the Board of Equalization of the Territory of New Mexico, met for the transaction of such business as might properly come before it. There being present, Mr. C. W. Kennedy, Mr. W. R. Tipton, Mr. George L. Ulrich, Mr. D. C. Hobart, Absent Romulo Martinez.

In the matter of the Las Vegas Hot Springs appeal which was brought before the August meeting, and for lack of proper data, referred to the January meeting, after due deliberation this board sustins the appeal, for the reason that the Clerk of San Miguel County, failed to send up a transcript of the record in said cause, and this board instructs said Clerk and the board of County Commissioners to correct their records of assessment in said cause in accordance with the return made by said Las Vegas Hot Springs Hotel Company.

Santa Fe, New Mexico.
January 3rd, 1896.

Board met pursuant to adjournment of yesterday. Present: C. W. Kennedy, W. R. Tipton, Geo. L. Ulrich and D. C. Hobart. Absent Romulo Martinez.

After due deliberation, this Board has fixed the following values for the ensuing year on railroad property, telegraph lines and telephone lines, within the Territory of New Mexico, as fol-ows:

150 All railroads of standard gauge, which shall be subject to taxation on the first day of March, A. D. 1896, in each County in the Territory of New Mexico, through which they may run and are situated and running north and east of the Atchison, Topeka and Santa Fe Railroad depot, in the City of Albuquerque, N. M. shall be valued and assessed to the company or companies owning or operating the same, at the rate of Seven Thousand dollars per mile, for each and every mile of main line, and at the rate of twenty five hundred dollars per mile, for each and every mile of side, switch and track, and at the rate of Four thousand five hundred dollars per mile for each and every mile of branch lines and that the assessment and value per mile on the above stated main line, branch line and switches, shall include all rolling stock of said company or companies use- thereon, except such cars as belong to the Pullman Palace Car Company, and designated a/ Pullman Palace Cars, and consisting of locomotive engines and cars of all descriptions, but shall not include any buildings, machinery or tools used in repair shops, or any supplies or materials, nor shall it include telegraph lines.

It is ordered and decided by this Board that all telegraph lines that are completed and in operation within the Territory of New Mexico, on the first day of March A. D. 1896, shall be valued and assessed to the company or companies operating the same, within the counties through which they are operated, at the rate of Twenty-

five dollars per mile for the first wire, and five dollars per mile for each and every additional wire.

It is further ordered and decided by this Board, that all railroads of standard gauge, situated south of the north end of the Atchison, Topeka and Santa Fe Railroad depot, in the City of Albuquerque, N. M., including the Atlantic and Pacific Railroad, the Southern Pacific Railroad and all other standard gauge railroads, south of said city of Albuquerque, N. M. subject to taxation on the first day of March A. D. 1896, shall be assessed and valued for the purpose of taxation, to the company or companies owning or operating
151 the same, in the county through which they run, at the rate of six thousand five hundred dollars per mile, for each and every mile of main line, and at the rate of four thousand five hundred dollars per mile, for all branch lines, and at the rate of twenty-five hundred dollars per mile for all switches and side tracks connected with said road; which said valuation shall include all rolling stock, used by said company or companies except, Pullman Palace Cars, consisting of locomotive engines and cars of all description, but shall not include any buildings, tools or machinery used in repair shops, or any other material or supplies nor telegraph lines.

It is further ordered and decreed by this Board, that all narrow gauge railroads running through and being operated within this Territory of New Mex. and subject to taxation on the first day of March 1896 shall be valued for the purposes of taxation, in the various counties through which they run at the rate of three thousand dollars per mile for each and every mile of main and branch lines and at the rate of fifteen hundred dollars per mile on all switches and side tracks connected therewith, which said valuation shall include all rolling stock consisting of locomotive engines and cars of all description except Pullman Palace Cars; but shall not include any buildings, tools, or machinery used in repair shops or material or supplies or telegraph lines.

In the matter of fixing the values of standard gauge *rial*roads, north (*north*) of the city of Albuquerque, New Mexico, it shall be understood that such valuation, does not apply to the Union Pacific, Denver and Gulf R. R. This Board after due consideration, etc. August 5th (1896).

In the matter of the A. T. & S. F. Rd. Company, Grant County, the appeal was sustained as to the half interest in the depot and freight house assessed; but was disallowed as to the other property mentioned for the reason that to sustain such an appeal would
152 be to discriminate against the rate in other counties, all of which appear to be at the same rate as the case in question. 9 o'clock a. m. Jan. 5th. (1897.)

The territorial board of equalization for the Territory has fixed the following values for the ensuing year on railroad property, telegraph lines and telephone lines within the Territory of New Mexico as follows:

All railroads of standard gauge which shall be subject to taxation

on the 1st day of March 1897, in each county in the Territory of New Mexico, through which they may run and are situated and running north and east of the Atchison, Topeka and Santa Fe R. R. depot, in the city of Albuquerque, N. M. shall be valued and assessed to the companies owning or operating the same at the rate of $7,000.00 per mile, for each and every mile of the main line, and at the rate of $2,500.00 per mile for each and every mile of switch and side track, and at the rate of $4,500.00 per mile for each and every mile of branch lines, and that the assessments and values per mile on the above stated main line, branch lines and switches, shall include all rolling stock of said company or companies used thereon, except such cars as belong to the Pullman Palace Car Company, and designated Pullman Palace Cars. The above rolling stock mentioned consists of locomotive engines, and cars of all descriptions but shall not include any buildings, machinery or tools used in repair shops, or any supplies or materials on hand, nor shall it include the telegraph lines.

It is further ordered and decided by this Board that all railroads of standard gauge, situated south of the north end of the Atchison, Topeka and Santa Fe Railroad depot, in the city of Albuquerque, N. M. including he Atlantic and Pacific Railroad, shall be subject to taxation on the first day of March, 1897, and shall be assessed for taxable purposes to the company or companies owning or operating the same in the county or counties through which they run, at the rate of $6,500.00 per mile for each and every mile of main line, and at the rate of $4,500.00 per mile for each and every mile of
153 branch line and shall be assessed at the rate of $2,500.00 per mile for each and every mile of switch and side track connected with and belonging to the said road. Which said valuation shall include all rolling stock used by said company or companies except Pullman Palace Cars. Said rolling stock included, consists of locomotive engines and cars of all descriptions but shall not include any buildings, tools or machinery used in repair shops or any material or supplies on hand and shall not include telegraph lines.

It is ordered and decided by this Board that all telegraph lines that are completed, and in operation in the Territory of New Mexico, on the first day of March, 1897, shall be valued and assessed to the company or companies operating the same within the counties through which they are operated, at the rate of $25.00 per mile, for the first wire, and $5.00 per wire for each and every additional wire.

Santa Fe, N. M.
September 20, 1897.

The Board met pursuant to adjournment of Saturday. All members present.

In the matter of the appeal of the A. T. & S. F. R. R., from Grant County, New Mexico, said appeal was continued to the January meeting of this Board, on account of the inability of the District

Attorney for said County to attend such meeting, who desired to be heard in the case.

Santa Fe, New Mexico.
January 10,1898.

Afternoon Session, 2 p. m.

The Board met pursuant to adjournment. All members present as this morning. In the matter of the appeal of the Silver City, Deming and Pacific Railroad of Grant County, New Mexico, which was continued from the September meeting of 1897, after receiving the opinion of the Solicitor General of New Mexico, and carefully considering all evidence presented, to said Board, the Board
154 sustains the appeal of the A. T. & S. F. R. R., and places the value of said branch line (the same having been shown by proof brought before this Board, that the same is a branch line and shall be classified as such) and the Board instructs the Assessor of said County, to correct his tax roll in accordance with such finding.

Santa Fe, N. M.
Wednesday Morning.

10 o'clock a. m. January 12, 1898.

The Board met pursuant to adjournment of yesterday afternoon. All members present.

Hon. Henry L. Waldo representing the A. T. & S. F. R. R. appeared before this Board in the matter of taxation of said road for the ensuing year. This Board heard the statements of Judge Waldo, and received and placed on file comparisons of taxation on various classes of property, for further consideration.

Santa Fe, N. M.
January 14, 1898.

Friday Morning.

The Board met pursuant to adjournment of yesterday evening. All members present.

The Territorial Board of Equalization for the Territory of New Mexico, have fixed the following values for the ensuing year, on all taxable property as follows:

All railroads of standard gauge which shall be subject to taxation on the first day of March, 1898, in each county in the Territory of New Mexico, through which they may run, and are situated and running, north and east of the Atchison, Topeka and Santa Fe Railroad depot, in the city of Albuquerque, New Mexico, shall be valued and assessed to the companies owning or operating the same, at the rate of Seven Thousand Dollars per mile, for each and every mile of main line; and at the rate of Twelve hundred dollars per

mile, for each and every mile of switch and side track; and that the assessment and values per mile on the above stated main
155 line, and switches and side tracks, shall include all rolling stock of said company or companies used thereon, except such cars as belong to the Pullman Palace Car Company, and designated as Pullman Palace Cars.

The above mentioned rolling stock consists of locomotive engines and cars of all description, but shall not include any buildings, machinery or tools used in repair shops, or any supplies or material on hand, nor shall it include the telegraph lines.

It is further ordered and decided by this Board that all railroads of standard gauge situated south of the north end of the Atchison, Topeka and Santa Fe Railroad depot in the City of Albuquerque, New Mexico, including the Santa Fe Pacific Railroad and Southern Pacific Railroad shall be subject to taxation on the first day of March, 1898, and shall be assessed for taxable purposes, to the company or companies operating or owning the same, in the county or counties through which they may run, at the rate of six thousand five hundred dollars per mile, for each and every mile of main line; and at the rate of Twelve Hundred Dollars per mile for each and every mile of switch and side track, connected and belonging to said road; which said valuation shall include all rolling stock used by said company or companies except Pullman Palace Cars. Said rolling stock included consists of locomotive engines and cars of all description; but shall not include any buildings, tools or machinery used in repair shops or any material or supplies on hand; and shall not include telegraph lines.

January 15, '98.

In the matter of fixing values of the various branch lines of railroad running and being operated through the various counties of New Mexico; It is ordered and decided by this Board, that the following valuations shall be placed on the various branch lines of the railroads to-wit:

Dillon & Blossburg Branch of the A. T. & S. F. R. R. four thousand five hundred dollars per mile for each and every mile of
156 main line, and twelve hundred dollars per mile of switch and side track. Hot Springs Branch of the A. T. & S. F. R. R., four thousand dollars per mile for each and every mile of main line, and twelve hundred dollars per mile for each and every mile of side track and switches.

In the matter of the Santa Fe Branch of the A. T. & S. F. R. R. this Board places the valuation of said road at the rate of Four thousand five hundred Dollars per mile for each and every mile of main line and at the rate of twelve hundred dollars per mile for each and every mile of switch and side track.

In the matter of the Socorro and Magdalena Branch of the A. T. & S. F. R. R., this Board places the valuation of said branch at Four thousand Five Hundred Dollars per mile for each and every

mile of main line, and at the rate of twelve hundred dollars per mile for each and every mile of switch and side track.

In the matter of the Lake Valley Branch of the A. T. & S. F. R. R., this Board places the valuation of three thousand five hundred dollars per mile for each and every mile of main line, and Twelve hundred dollars per mile for each and every mile of switch and side track.

In the matter of the Silver City, Deming and Pacific Railroad, this Board fixes the valuation of four thousand five hundred dollars per mile, for each and every mile of main line, and the valuation of twelve hundred dollars per mile of switch and side track.

In the matter of the Whitewater Spur of the A. T. & S. F. R.. this Board fixes the valuation at Three Thousand Dollars per mile for each and every mile of main line of said Spur, and at the rate of Twelve Hundred Dollars per mile for each and every mile of switch and side track.

It is further ordered and decided by this Board that all telegraph lines, that are completed and operated within the Territory of New Mexico, on the first day of March A. D. 1898, shall be valued and assessed to the company or companies operating the same,
157 within the counties through which they may run and are operated, at the rate of twenty-five dollars per mile for the first wire, and at the rate of five dollars per mile for each and every additional wire.

Afternoon Session, Monday, September 12, '98.

The Board met pursuant to adjournment of this morning. All members present.

In the matter of the appeal of the A. T. & S. F. Railway Company, and the Silver City, Deming and Pacific Railway Company, the appeal of said companies is sustained; also the appeal of the aforesaid companies for 1897, which was continued from the September, 1897, to the January meeting 1898 and then continued to the present meeting, was also sustained; the portion of said appeals referring to personal property of said roads for the years 1897 and 1898, was sustained for the reason that all property of like class throughout the various counties through which said road runs, were assessed at the same valuation as has been placed on said property in Grant County by said Railroad, as evidenced by the returns of said company. And this Board instructs the Territorial Auditor to notify the Board of County Commissioners of Grant County to correct their records in accordance with this rule.

Afternoon Session.
Tuesday, Jan. 10, 1899.

Board met pursuant to adjournment. All members present.

Hon. Henry L. Waldo, representing the A. T. & S. F. R. R., appeared before the Board in the matter of taxation of said road for

the ensuing year. The Board heard the statements made by Judge Waldo and placed the same on file for further consideration.

Friday Morning .

Jan. 13, 1899.

Board met pursuant to adjournment of yesterday. All members present.

158 On motion of the Hon. Thos. Hughes the Board proceeded to consider the valuations to be placed on the various classes of property subject to taxation, on the first day of March, 1899, within the Territory of New Mexico.

The Territorial Board of Equalization for the Territory of New Mexico, have fixed the following values, for the ensuing year, on all taxable property, within said Territory, subject to taxation on the first day of March, 1899, as follows:

All railroads of standard gauge which shall be subject to taxation on the first day of March, 1899, in each county, in the Territory of New Mexico, through which they may run and are situated and running north and east of the Atchison, Topeka and Santa Fe Railroad depot in the city of Albuquerque, New Mexico, shall be valued and assessed to the companies owning or operating the same, at the rate of seven thousand dollars per mile, for each and every mile of the main line; and at the rate of twelve hundred dollars per mile, for each and every mile of switch and side track. And the assessment and values per mile of the above stated main line, and switches and side tracks, shall include all rolling stock, of said company or companies used thereon, except such cars as belong to the Pullman Palace Car Company, and designated as Pullman Palace Cars.

The above rolling stock mentioned consists of locomotive engines and cars of all descriptions, but shall not include any buildings, machinery or tools used in the repair shops, or any supplies or material on hand, nor shall it include the telegraph lines.

It is further ordered and decided by this Board, that all railroads of standard gauge, situated south of the north end of the Atchison, Topeka and Santa Fe railroad depot, in the city of Albuquerque, New Mexico, (including the Santa Fe Pacific railroad, shall be subject to taxation on the first day of March, 1899, and shall be assessed for taxable purposes, to the company or companies operating or owning the same in the county or counties through which

159 they may run, at the rate of Six Thousand Five Hundred Dollars per mile, for each and every mile of main line; and at the rate of Twelve Hundred Dollars per mile, for each and every mile, of switch and side-track; connected with and belonging to said road; which said valuation shall include all rolling stock used by said company or companies, except Pullman Palace Cars. Said rolling stock included consists of locomotive engines and cars of all descriptions; but shall not include any buildings, tools or machinery used in repair shops, or any material or any supplies on hand; and shall not include telegraph lines.

In the matter of fixing the value of the various branch lines of

railroad running and operating through the various counties of New Mexico, it is ordered and decided by this Board, that the fol-owing valuations shall be placed on the various branch lines of the railroads, to-wit:

Dillon and Blossburg branch of the A. T. & S. F. R. R. Four Thousand Five Hundred Dollars per mile, for each and every mile of main line, and Twelve Hundred Dollars per mile, for each and every mile of switch and side track.

Hot Springs branch of the A. T. & S. F. R. R., Four Thousand Five Hundred Dollars per mile, for each and every mile of the main line, and Twelve Hundred Dollars per mile, for each and every mile of side tracks and switches.

In the matter of the Santa Fe branch of the A. T. & S. F. R. R., this Board places the valuation of said Railroad, at the rate of Four Thousand Five Hundred Dollars per mile, for each and every mile of the main line, and at the rate of Twelve Hundred Dollars per mile, for each and every mile of switch and side track.

In the matter of the Socorro & Magdalena branch of the A., T. & S. F. R. R., this Board places the valuation of said branch at Four Thousand dollars per mile, for each and every mile of the main line, and at the rate of Twelve Hundred Dollars per mile for each and every mile of switch and side track.

In the matter of the Lake Valley branch of the A. T. & S.
160 F. R. R., this Board places the valuation of Three Thousand Five Hundred Dollars per mile, for each and every mile of the main line, and Twelve Hundred dollars per mile, for each and every mile of switch and side track.

In the matter of the Silver City, Deming and Pacific railroad, this Board fixes the valuation, of Four Thousand Five Hundred Dollars per mile, for each and every mile of main line, and the valuation of Twelve Hundred dollars per mile, for each and every mile of switch and side track.

In the matter of the Whitewater spur of the A. T. & S. F. R. R., this Board fixes the valuation at Three Thousand Dollars per mile, for each and every mile of the main line, of said spur, and at the rate of Twelve Hundred Dollars per mile, for each and every mile, of switch and side track.

It is further ordered and decided by this Board that all telegraph lines, that are completed and operated within the Territory of New Mexico, on the first day of March, 1899, shall be valued and assessed to the company or companies operating the same, within the counties through which they may run and are operated, at the rate of Twenty five dollars per mile for the first wire; and at the rate of Five Dollars per mile, for each and every additional wire.

TERRITORY OF NEW MEXICO.

Office of the Secretary.

Certificate.

I, Geo. H. Wallace, Secretary of the Territory of New Mexico, do hereby certify there was filed for record in this office at ..... o'clock ..M, on the ..... day of ..... A. D. ..... Protest of the Silver City, Deming and Pacific Railroad Company against the valuation placed upon its track by the Board of County Commissioners of Grant County, New Mexico, for the year 1897..... and also, that I have compared the following copy of the same with
161 the original thereof now on file, and declare it to be a correct transcript therefrom and of the whole thereof.

In Witness Whereof, I have hereunto set my hand and affixed my official seal this Sixteenth day of May, A. D. 1899.

(Seal) (Signed) GEO. H. WALLACE,
Secretary of New Mexico.

Exhibit "F."

To the Honorable Board of County Commissioners, of Grant County, Territory of New Mexico.

Gentlemen:

Your petitioner, The Silver City, Deming and Pacific Railroad Company, respectfully represents to your Honorable Board that it has made and filed with the proper officer of the County of Grant its return of taxable property for the year eighteen hundred and ninety seven, that in said return it fixed and estimated the value of its road bed for its running track in said County at $4500. per mile, and that it had 48.29 miles of said road-bed in said County of Grant, and that the same was of the value of $217,305., and that your petitioner is informed that the said return of said property has been raised by your Honorable Body from the sum of $217,305. which was the amount of the valuation of said track as returned by your petitioner, to the sum of $313,885. being an increase over and above assessment valuation and return of said track by your petitioner of the sum of $96,580., in making which assessment and raise your Honorable Body increased the valuation of said track from the rate of $4500. per mile to the rate of $6500. per mile as though the same was a main track of the main line, where as in truth and fact your petitioner represents and states to your Honorable Body that said track of said line is, and is in reality used as, a branch line of railroad in the Territory of New Mexico within the meaning of the definition and intent of the Board of Equalization of the Territory of New Mexico
162 in fixing the rate of taxation for branch lines that the said Silver City, Deming and Pacific Railroad Company's line lies

south of the city of Albuquerque, New Mexico, and the valuation thereof, has by said Board of Equalization been fixed at the rate of $4500. per mile for each mile thereof.

Your petitioner also states to your Honorable Body that it has been notified that its real and personal property as returned by it in the County of Grant aforesaid has been increased from the sum of $11,894. to $20,470., and that the Board of County Commissioners have added to this return, track scales at Deming, at a valuation of $200., and a Pipe line from Whitney to Deming, at a valuation of $500., and your petitioner states to your Honorable Body that its assessment, return and valuation of its said railroad track and of its said personal property in said county was a correct, just and fair valuation thereof; the said return of said railroad track being determined by the action of said Board of Equalization as aforesaid, and the said return as to the valuation of said personal property being the same rate and valuation at which similar railroad property throughout the Territory in general is valued.

Your petitioner therefore prays that the action of the said Board of County Commissioners in raising the valuation of said track, and of said personal property, may be revoked and rescinded, and that said valuation of said track and personal property so made by your petitioner in its return thereof may be reinstated and allowed by your Honorable Board as originally made by your petitioner. And your petitioner further says that it owns no real estate in said County of Grant.

SILVER CITY DEMING AND PACIFIC RAILROAD COMPANY,

By
(Signed) CONWAY & HAWKINS,
its attorneys.

163 TERRITORY OF NEW MEXICO,
OFFICE OF THE SECRETARY.

CERTIFICATE.

I, Geo. H. Wallace, Secretary of the Territory of New Mexico, do hereby certify there was filed for record in this office, at ..... o'clock....M., on this Twelfth day of September, A. D. 1897, the appeal of Silver City, Deming and Pacific Railroad Company to the Board of Equalization.....and also, that I have compared the following copy of the same, with the original thereof now on file, and declare it to be a correct transcript therefrom and of the whole thereof.

In witness whereof, I have hereunto set my mand and
(SEAL) affixed my official seal this Sixteenth day of May, A. D. 1899.

(Signed) GEO. H. WALLACE,
Secretary of New Mexico.

EXHIBIT "F."

To the Honorable Board of County Commissioners of Grant County, Territory of New Mexico:

Gentlemen: Your petitioner, having heretofore presented its petition to your Honorable Body praying that the action of your Honorable Body heretofore taken in raising the valuation of your petitioner's railroad track in the County of Grant from the rate of $4,500.00 to $6,500.00 per mile, and the raise of the valuation of its personal property as returned by it in the County of Grant from the sum of $11,894.00 to the sum of $20,470.00, and also the adding of its return of track scales at Deming at a valuation of $200.00 and the pipe line from Whitney to Deming at a valuation of $500.00, should be revoked and rescinded, and the original return and valuation of your petitioner, *and*tofore made by it as required by law, should be reinstated and affirmed by your Honorable Body and your Honorable Board having refused the prayer of your petitioner, and having ordered and directed that its said raise in the valu-
164 ation of said property and its additions to the amount thereof should be affirmed.

Now, therefore, your petitioner, alleging that the valuation of its said line in the County of Grant aforesaid, is, and has been, fixed by law at the sum of $4,500.00 per mile as returned by it, and that the valuation of its personal property as made by it in its original return is, and was, a true and correct valuation and description thereof, hereby takes and prays an appeal from the action of your Honorable Body in declining to grant the petition of your petitioner heretofore presented to your Honorable Board, to, and to be considered by, the Territorial Board of Equalization of the Territory of New Mexico, in order that the return so originally made by your petitioner of the amount and value of its said taxable property in the County of Grant aforesaid may be sustained by said Territorial Board of Equalization, and that the action of your Honorable Body in raising the valuation and amount of said property so owned by your petitioner and so returned by it may be, by said Territorial Board vacated, set aside and held for naught.

And your petitioner will ever pray, etc.

SILVER CITY, DEMING AND PACIFIC RAILROAD COMPANY, By

CONWAY AND HAWKINS,
Its Attorneys.

(Endorsed)

Filed in my office this 12th day of July, 1897.
E. M. YOUNG, Clerk.

In the District Court of the Third Judicial District of the Territory of New Mexico, within and for the County of Grant.

165 The territory of New Mexico, Plaintiff.) versus) No. 3425.
The Atchison, Topeka and Santa Fe Railway Company,) No. 3457.
The Rio Grande, Mexico and Pacific Railroad Company and the Silver City, Deming and Pacific Railroad Company, Defendants.) No. 3458.

The above causes coming on to be heard for trial before the Court under a stipulation herein of the parties plaintiff and defendant and upon the agreed statement of facts heretofore filed herein, and the Court having read said agreed statement of facts and having heard the argument of counsel for the respective parties herein, and being fully advised in the premises, doth find as follows, viz:

That The Atchison, Topeka and Santa Fe Railway Company is indebted to the plaintiff, the Territory of New Mexico, in the sum of One Thousand, four hundred and eighty-and seventy one-hundredths dollars for taxes levied and assessed in the year 1895 by said County of Grant, and in the sum of One Thousand, nine hundred and seventeen and eighty-three hundredths dollars for taxes assessed and levied in the year 1896 by said County of Grant for the payment of judgments against said County of Grant and in the sum of One Thousand, four hundred and eighty-one and ninety-six hundredths dollars for taxes assessed and levied in the year 1897 by said County of Grant, and in the sum of Two Hundred and twenty-six and twenty-one hundredths dollars for taxes assessed and levied in the year 1895 by said county of Grant for Territorial, County and School purposes and for the payment of judgments against said County of Grant upon an increased valuation made by the Board of County Commissioners of said County of Grant, the property of the said defendants in said County of Grant, for said year 1895,
166 being a total indebtedness of Five Thousand, one hundred and fifty-six and seventy-one hundredths dollars.

Wherefore, It is by the Court, considered, ordered and adjudged that the plaintiff, the Territory of New Mexico, do have and recover of and from the defendants, The Atchison, Topeka and Santa Fe Railway Company, the Rio Grande, Mexico and Pacific Railroad Company and the Silver City, Deming and Pacific Railroad Company, the sum of Five Thousand, one hundred and fifty-six and seventy-one hundredths dollars, together with interest thereon at the rate of six per cent per annum from date and its costs in this suit and that execution issue therefor; to which consideration, order and judgment, the said defendants and each of them by their attorney, at and before the entering of said judgment, duly accept.

Done at Silver City, N. M., this 9th day of October, A. D. 1902.

FRANK W. PARKER,
Associate Justice, etc.

And because the foregoing matters are not matters of record in said causes, the defendants and each of them, pray that this their bill of exceptions containing the same may be signed, sealed and made a part of the record, which is accordingly done this third day of December, A. D. 1902, and it is hereby certified that this bill of exceptions contains all the evidence used and given on the trial of the said causes as per the agreed statement of facts and the stipulation heretofore filed herein.

(Signed) FRANK W. PARKER,
Associate Justice of the Supreme Court of the Territory of New Mexico, and Judge of the District Court for the County of Grant.

The plaintiff agrees to the correctness of the foregoing bill
167 of exceptions and consents that the same may be signed and sealed by any Justice of the Supreme Court at any time on or before the 15th day of December, A. D. 1902.

(Signed) A. H. HARLLEE,
Attorney for Plaintiff.

Which said Bill of Exceptions was and is endorsed in words and figures as follows, to-wit:

Nos. 3425, 3457, 3458.

In the District Court, County of Grant, Territory of New Mexico.
Territory of New Mexico,
Plaintiff.
versus
The A., T. & S. F. Railway Co.,
The R. G., M. & P. Railroad Co.,
The S. C., D. & P. Railroad Co.,
Defendants.

(Three Cases Consolidated)

Bill of Exceptions.

Filed in my office December 4, 1902.
JAMES P. MITCHELL, Clerk.
By JOHN LEMON, Deputy.

Territory of New Mexico,)
Third Judicial District,)
County of Dona Ana.)

I, James P. Mitchell, Clerk of the District Court of the Third Judicial District of the Territory of New Mexico do hereby certify that the foregoing One Hundred and thirty-one typewritten pages contain a full, true and complete copy of the Writs of Error issued out of the Supreme Court of the Territory of New Mexico, of the

Stipulation, of the whole of the record, and of the Bill of Exceptions, in the cases wherein the Territory of New Mexico is
168 plaintiff, and The Atchison, Topeka and Santa Fe Railway Company, and the Rio Grande, Mexico and Pacific, and The Silver City, Deming and Pacific are defendants, Nos. 3425, 3457 and 3458, respectively, as therein stated, and as the same appear on file and of record in my office.

In Testimony Whereof, I hereunto set my hand and affix the seal of said Court at my office in Las Cruces, New Mexico, this 17th day of December, A. D. 1902.

(Seal) JAMES P. MITCHELL, Clerk.

169 And Afterwards, on towit:—on the 26th day of December, A. D., 1902, there was filed in the office of the said Clerk of the Supreme Court of the Territory of New Mexico, an assignment of errors in the above three cases, which said assignment of errors was and is in words and figures, following towit:—

In the Supreme Court of the Teritory of New Mexico

January Term, A. D., 1903

The Atchison, Topeka and Santa Fe Railway Company,
Plaintiff in Error,

versus

The Territory of New Mexico
Defendant in Error

The Rio Grande, Mexico and Pacific Railroad Company,
Plaintiff in Error,

versus

The Territory of New Mexico,
Defendant in Error,

The Silver City, Deming and Pacific Railroad Company,
Plaintiff in Error,

versus

The Territory of New Mexico,
Defendant in Error.

Assignment of Error.

Now comes the plaintiffs in error in each of the above entitled causes, respectively, and assign as ground of error committed by the court below the following, viz:—

1st. The Court erred in finding that the defendant in error was entitled to recover judgment against the Plaintiffs in Error in the

sum of five Thousand one hundred fifty six and seventy one
170 hundreths dollars for taxes levied and assessed in the years 1895, 1896 and 1897 for the payment of judgments against the County of Grant.

2nd. The court erred in finding and declaring to be valid and legal the levy of the Board of County Commissioners of the county of Grant made in and for the year 1895 of 3 and 50-100 mills for the payment of a judgment against said county in favor of A. B. Laird.

3rd. The court erred in finding and declaring to be valid and legal the levy of the Board of County Commissioners of the county of Grant made in and for the year 1896 of 4 and 50-100 mills for the payment of judgments against said county and the Board of county commissioners thereof.

4th. The court erred in finding and declaring to be valid and legal legal the levy of the Board of County Commissioners of the county of Grant made in and for the year 1897 of 16 and 50-100 mills for county purposes, a part of which said levy for county purposes was for the purpose of raising money for the payment of judgments against said county and the board of county commissioners thereof.

5th. The court erred in finding and declaring to be due and owing from the Plaintiffs in Error to the defendants in error the sum of two hundred seventy six and twenty one hundreths dollars for taxes levied and assessed in the year 1895 by the county of Grant for Territorial, County and School purposes and for the payment of judgments against said county of Grant upon an increased valuation made by the board of county commissioners of said county upon the year 1895.

Wherefore, Plaintiffs in Error pray that said judgment be reversed, vacated and set aside and held for naught, and that such judgment be entered herein as to this Honorable Court shall seem agreeable to law.

(Signed) H. L. WALDO,
R. E. TWITCHELL,
Attorneys for Plaintiffs in Error.

171 And afterwards on to wit, at a regular term of the Supreme Court of the Territory of New Mexico, begun and held at Santa Fe, the seat of Government, on the first Wednesday after the first Monday in January, A. D. 1903, the same being the 7th day of January, 1903, on the seventh day of the said regular term, the same being the 15th day of January A. D., 1903, the following among other proceedings were had and entered of record, as follows, to wit:—

The Atchison, Topeka & Santa Fe Railway Company, Plaintiff in Error, vs. The Territory of New Mexico, Defendant in Error.	)	No. 984. Error to District Court, Grant County.
Rio Grande, Mexico & Pacific Railroad Company, Plaintiff in Error, vs. The Territory of New Mexico, Defendant in Error.	)	No. 985. Error to District Court, Grant County.
Silver City, Deming & Pacific Railroad Company, Plaintiff in Error, vs. The Territory of New Mexico, Defendant in Error.	)	No. 985. Error to District Court, Grant County.

These causes coming on to be heard upon the transcript of record, assignment of errors and briefs of counsel, are argued by R. E. Twitchell, Esq., attorney for plaintiffs in error and A. H. Harllee, Esq. Attorney for defendant in error, and submitted to the court, and the court not being sufficiently advised in the premises, takes the same under advisement.

And afterwards on to wit, at the said regular term of the Supreme Court of the Territory of New Mexico, on the eighteenth day thereof, the same being the twenty-sixth day of February, A. D. 1903, the following among other proceedings were had and entered of record, as follows towit:—

172 The Atchison, Topeka and Santa Fe Railroad Company, Plaintiff in Error, vs. The Territory of New Mexico, Defendant in Error.) No. 984. Error to District Court, Grant County.

The Rio Grande, Mexico & Pacific Railroad Company, vs. The Territory of New Mexico, Defendant in Error.) No. 985. Error to District Court, Grant County.

The Silver City, Deming & Pacific Railroad Company, Plaintiff in Error, vs. The Territory of New Mexico, Defendant in Error.) No. 986. Error to District Court, Grant County.

These causes having been argued by counsel, and submitted to and taken under advisement by the court upon a previous day of the present term, and the court being now sufficiently advised in the premises announces its decision by Associate Justice Baker, Chief Justice Mills, and Associate Justice McFie concur-ing, affirming the judgment of the district court to the extent of the sum of two hundred and seventy-six 21-100 ($276.21) dollars, and entering judgment in this court for the said amount, for reasons stated in the opinion of the court on file; It is therefore considered, adjudged and decreed by the court that the defendant in error herein, do have and recover of the said plaintiff in error in the above entitled three causes the sum of two hundred and seventy six dollars and twenty one cents ($276.21) with interest and costs from this date.

And afterwards on to wit: at a regular term of the Supreme Court of the Territory of New Mexico, begun and held at Santa Fe, on the First Wednesday after the first Monday in January A. D. 1905, on the tenth day thereof, the same being the 17th day of January A. D., 1905, the following among other proceedings were had and entered of record, following to wit:—

173 The Atchison, Topeka and Santa Fe Railway Company, Plaintiff in Error, vs. The Territory of New Mexico, Defendant in Error.	)	No. 984. Error to District Court, Grant County.
The Rio Grande, Mexico and Pacific Railroad Company, Plaintiff in Error, vs. The Territory of New Mexico, Defendant in Error.	)	No. 985. Error to District Court, Grant County.
The Silver City, Deming and Pacific Railroad Company, Plaintiff in Error, vs. The Territory of New Mexico, Defendant in Error.	)	No. 985. Error to District Court, Grant County.

Now comes the defendant in error in the above entitled causes, by its attorney A. H. Harllee, by W. B. Childers, of counsel, and prays to the court to be granted an appeal in the above entitled causes from the judgment of this court to the Supreme Court of the United States of America, and the court being sufficiently advised in the premises, grants said motion. It is therefore considered and adjudged by the court that the defendant in error herein do have an appeal from the judgment and decree of this court herein, to the Supreme Court of the United States.

And afterwards, on to wit on the 26th day of February, A. D., 1903 there was filed in the office of the clerk of the Supreme Court of the Territory of New Mexico, an opinion of the court in the above entitled causes, which said opinion of the court, was in words, and figures, following to wit:—

174 In the Supreme Court of the Territory of New Mexico.

January Term, A. D., 1903.

Atchison, Topeka and Santa Fe Railway Company,
Plaintiff in Error,

vs.

Territory of New Mexico,
Defendant in Error.

The Rio Grande, Mexico and Pacific Railroad Company,
Plaintiff in Error,

vs.

The Territory of New Mexico,
Defendant in Error.

Silver City, Deming and Pacific Railroad Company,
Plaintiff in Error,

vs.

Territory of New Mexico,
Defendant in Error.

Writ of Error from Grant County. Before Parker, J.

Henry L. Waldo and R. E. Twitchell, Attorneys for Plaintiffs in Error.

A. H. Harllee, and W. H. H. Llewellyn, Attorneys for Defendant in Error.

Syllabus.

1. The court can so far inquire into a judgment, rendered against a county, as to ascertain if the claim is legally payable out of taxes sought to be so applied.
2. A claim against a county merged into judgment, carries with it all the infirmities, of want of authority of the county commissioners to levy a tax to pay such claim.
3. If the county commissioners have no authority to levy a tax to pay a claim against a county, they have no authority to levy a tax to pay a judgment based on such claim.

175 Opinion of the Court.

BAKER, J.

The three above entitles cases, were tried as one case, upon an agreed statement of facts in the District court of Grant County, without the intervention of a jury, and judgment rendered against said several Plaintiffs in Error, from which judgment writs of error were sued out.

The special levy of taxes contested by plaintiffs in error was made to pay certain judgments against said county, which judgments were rendered upon claims constituting a part of the county current expenses of said county for the year- 1895, 1896, and 1897. This special levy was in excess of the statutory limit of two and one half mills for county current expenses, and the one half of one mill for deficit.

The all important question raised in this case, is whether or not the court can inquire into the judgment to determine whether the claim is one legally payable out of the taxes sought to be collected.

Defendant in error contends that the judgments are not county current expenses, *but judgments,* and that the nature of the claim cannot be inquired into.

This is the first time this court has been called upon to construe this statutes, and the effect of a judgment against a county for county current expenses in excess of three mills upon the authority of county commissioners to levy taxes to pay the same. Section one of chapter 2 of the session laws of 1874, provides that property "shall be subject to an advalorem tax of one per centum upon each dollars of the value thereof, which shall be assessed and collected as is now, or as may be hereafter provided by law for the assessment and collection of taxes, one half thereof to be applied solely and exclusively for Territorial purposes, one fourth in like manner for county purposes, and
176 the remaining one fourth to be applied to school purposes."

Section 7 of Chapter 1 of the session laws of 1876 (section 657, Compiled Laws of 1897) provides: "When a judgment shall be rendered against any board of county commissioners or against any county officer in an action prosecuted by or against him in his official name, where the same shall be paid by the county, no execution shall issue upon such judgment, but the same shall be levied, and paid by taxes as other county taxes, and when so collected, shall be paid by the county treasurer, to the person to whom the same shall be adjudged, upon the delivery of the proper voucher thereof." Paragraph 10 of section 14 of said act provides, " * * * in no event shall the said commissioners levy any assessment of taxes exceeding one per cent." Section 6 of chapter 62 of the session laws of 1882, provides, "There shall be levied and assessed upon the taxable property within this territory in each year, the following taxes: For Territorial revenue, one half of one percent: For ordinary county revenue, one fourth of one percent: For maintenance and support of Public schools one fourth of one percent." Section 2 of chapter 68 of the laws of 1889 provides, among other things, "that if at any time the taxes collected during any year shall not be sufficient to meet current expenses of such county, for the succe-ding year, then it shall be lawful at the next annual levy of taxes for the said county commissioners of said County, to make an additional levy not to exceed one half of one mill on each dollar of taxable property in such county, for the purpose of making up such deficit in the current expenses of such county."

These are all the provisions of the statutes governing the levy of taxes during the time involved in this case. It will be observed that section one of chapter two of the session laws of 1874, and section 6 of chapter 62 session laws of 1882, limit the levy for *county purposes* to one fourth of one percent. Paragraph ten of sec-
177 tion 14 of Chapter 1 of the session laws of 1876, restricts the levy to not to exceed one percent, but is silent as to the one fourth of one percent, *g*or county current expenses. As these acts are not in conflict with each other, all m*o*st stand. Therefore for county current expenses only one fourth of one percent referred to in such statutes, could be levied for county current expenses. Section 2 of Chapter 68 of the Laws of 1889, provides that an additional levy not to exceed one half of one mill may be made for the purpose of making up a deficit of the previous year, hence, for county current expenses, there could be a levy of only two and one half mills, plus one half of one mill in case of a deficit, any levy beyond this would be without authority of law, and we think it well settled, if *no authority of law* to make a levy there is *no legal tax.* Dillion on Municipal Corporations, p. 605; County Commissioners v. King, 67 Fed. 207. Neither public necessity nor public luxury is sufficient authority to make a levy of taxes, A tax is a forced contribution, and can only be sustained on the theory of good government. If what we have said concerning the authority, or, rather, limited authority, of the county commissioners to levy taxes, is true, was it possible for said county commissioners to create an indebtedness for county current expenses in excess of money raised by the Authorized levy, to wit, three mills, and then have this evidence of indebtedness, transformed into another form of evidence of indebtedness, namely, that of a judgment, and then resort to said chapter 1 Section 7 of the session laws o*g* 1876 (Section 657 C*i*mpiled Laws, 1897) and make a special levy over and above the authorized levy for county current expenses for the purposes of paying such judgment? We think not. If they can, all the provisions and attempted restrictions by statute, extending over many years of county commissioners to levy taxes must stand for naught; or, in other words, they can levy two and one half mills, plus one half of a mill or as much more as they please by transforming the items of coun*rt*
178 current expenses. The Judgment is only the evidence of an indebtedness against the county brought into being by a transformation of the original evidence of indebtedness, whether it was in the form of a warrant, and allowed a bill rendered for services performed for the county, the keeping of prisoners or any other form of evidence of indebtedness for county current expenses. Of course the judgment thus rendered is an unquestionable evidence of indebtedness so far as any collateral attac*h* upon such judgment is concerned. In our opinion the judgment creditor*s* stands in the same position as any other creditor so far as the enforcement of his claim is concerned. He can recover and secure a satisfaction of a judgment through the chan-el of the statute and in no other way,

and the current expenses of the county have exceeded two and one half mills, and one half of one mill for a deficit, and the claim is against the county for county current expenses in excess of the authorized levy, then there is no legal remedy for the collection of such a judgment. These statutes are neither intricate nor ambigious to con-true them, need neither president nor authority; all that is required is to give common meaning to common language. Defendant in error contends that no inquiry can be made concerning the judgments against the county, or the indebtedness for which the judgments were rendered. As we have said before, if that position is tenable, then all attempted legislation to restrict county commissioners in the amount of levy of taxes for county current expenses, is in conflict with this view of the law, and either said section 7 of chapter 1 of the session laws of 1876 must stand and the others fall, or we must construe all these statutes together, in the manner, as we have attempted hereinbefore to do. It must be understood that plaintiffs in error do not attack the judgments of defendant in error, but only the means of enforcing payment of them; so it is not a collateral attach nor any other attack upon the judgments. We are of the opinion that plaintiffs in error can inquire into the cause of action upon which the judgments were rendered, and if it
179 is found that the indebtedness for which said judgments were rendered was for county current expenses of said county, then no levy could have been made by the county Commissioners for the payment of such judgment, except such as is provided in the 2 and one half mills regular levy, and the one half of one mill levy for the purpose of making up a deficit. Lake County vs. Rollins, 130 U. S. 662; Rolls County Court*y* vs. United States 105 U. S., 733; United States vs. Macon, Co. 99 U. S. 582; G. I. & N. W. R. R. Co. vs. Macon, etc. 45 Pac. Rep. 494; Supervisors vs. U. S. 18 Wall., 71; Knox Co. vs. 9th National Bank, 147 U. S. 91. In Rolls Co. vs. U. S. *supra*, the law authorized the issue of bonds by Rolls county to pay for stock subscriptions for a railroad Company and to take proper steps to protect the interests and credit of the county, the bonds were issued with interest coupons. There was a suit upon some of the coupons, and judgment was rendered thereon, there was a writ of Mandamus to require the county court of said county to levy a tax for the payment of this judgment, there was a defence that there was no express statute for levying a tax to pay the judgment. These positions seems to be admitted, the court however, among other things said: "While the coupons are merged in the judgment, *they carried with them into the judgment all the remedies which in law form a part of their contract obligations, and these remedies, may still be enforced in all proper ways, notwithstanding the change in the form of the debt.*" Approved in Rolls County Court vs. U. S., 154 U. S. 675. If there is no provision of law for a levy of tax to pay the judgment, but there is such a provision to levy a tax for the payment of the indebtedness on which a judgment was obtained, and if we may inquire into such judgment to the ex-

tent of ascertaining the indebtedness for which the judgment was rendered, for the purpose of showing that the original indebtedness was one within the perview of the law, for which a levy could be made for the payment thereof, and thus enforce the payment
180 of the judgment, then would it not be equally as well founded in principle that we may inquire into the original indebtedness upon which the judgment was rendered for the purpose of *whosing* that the county commissioners had *no authority* of law to *create such indebtedness* on which judgment was rendered nor to levy a special tax for the payment of such indebtedness? If no authority existed to make a levy to pay such original claim, then it follows that there was no authority to make a levy to pay the judgment. In United States vs. County of Macon, 99 U. S., 591, Mr. Chief Justice Waite, speaking for the court, says, we have not been referred to any statute which gives a *judgment creditor, any right to a levy of taxes which he did not have before the judgment.* The judgment has the effect of the judicial determination of the validity of his demand, and the amount that is due, *but it gives him no new rights in respect to the means of payment.* This principle was reaffirmed upon the authority of this case in U. S. vs. Co. of Macon, 144 U. S. 568; See also Rose's notes on U. S. Rep. Vo. p. 749. This disposes of this branch of the case. So far as rendering judgment against the Plaintiff in error, upon said judgments against said county by the trial court, the case is hereby reversed, Trust Co. vs. Territory, *supra,* may have mislead the trial court in this case.

Defendant in error relies upon the United States Trust Company vs. Territory, 10 N. M. p. 416; (62 Pac. Rep. 987. On first blush it would seem that Trust Company vs. Territory, *supra,* would be in harmony with the contention of the defendant in error, but by a close and careful examination of that case, it would be observed that the court says: "For just what county expenses they (county warrants) were issued, does not appear, It may have been for keeping prisoners in jail. * * *." The pleadings in that case did not show that the items upon which the judgment was rendered were for county current expenses. The court could not pass upon the question of whether or not you could go behind the judgment to ascertain on what the judgment was rendered, such question
181 not being before the court. In that case the learned Judge said. "These claims not having merged into judgment, are not subject to collateral attacks in proceedings brought to enforce the payment of tax levies, and in proceedings, such as this it is improper for the court to go behind the judgment to ascertain upon what it was based for the purpose of preventng its payment," which proposition was correct under the issues raised *in that case.* The learned Judge may have been a little unfortunate in using the language above quoted, that question not being raised by the pleadings so far as the case of Trust Company vs. Territory, *supra,* is, if at all, in conflict with this opinion, the same is hereby overruled.

The item of $276.21, arising of account of a raise in the valuation

of the property of plaintiff in error, by the said board of County Commissioners, is not contested. Therefore it is ordered that defendant in error have and recover judgment in this court for said sum of $276.21 with interest and costs.

BENJAMIN S. BAKER,
Associate Justice.

We Concur:
JOHN R. McFIE, A. J.
I concur in the result.
WILLIAM J. MILLS, C. J.

182 TERRITORY OF NEW MEXICO, } ss:
Supreme Court, }

I, the undersigned, clerk of the Supreme Court of the Territory of New Mexico, do hereby certify that the above and foregoing one hundred and eighty one pages, contain a true, full and correct transcript of the, record and proceedings, pleadings and opinion filed in the above entitled causes, which is transmitted to the Supreme Court of the United States of America, in accordance with an appeal herein granted by the Supreme Court of the Territory of New Mexico.

Witness my hand and the seal of the Supreme Court of the Territory of New Mexico, this the 19th day of January, A. D., 1905.

[Seal Supreme Court, Territory of New Mexico.]

JOSE D. SENA,
Clerk Supreme Court of N. M.

Endorsed on cover: File No. 19,637. New Mexico Territory supreme court. Term No. 182. The Territory of New Mexico, appellant, vs. The Atchison, Topeka & Santa Fe Railway Company, The Rio Grande, Mexico & Pacific Railroad Company and The Silver City, Deming & Pacific Railroad Company. Filed February 20th, 1905. File No. 19,637.

FILE COPY.

BRIEF FOR APPELLANT

Supreme Court of the United States

October Term, 1905.

No. 182

THE TERRITORY OF NEW MEXICO, *Appellant*,

vs.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, ET AL.

APPEAL FROM NEW MEXICO.

A. H. Harllee,
Frank W. Clancy,
Counsel for Appellant.

IN THE

Supreme Court of the United States

October Term, 1905.

THE TERRITORY OF NEW MEXICO, *Appellant*,

vs.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, THE RIO GRANDE, MEXICO AND PACIFIC RAILROAD COMPANY, AND THE SILVER CITY, DEMING AND PACIFIC RAILROAD COMPANY.

STATEMENT OF THE CASE.

Three actions were brought in the district court of Grant county, New Mexico, against the railroad companies above named, for the recovery of delinquent taxes amounting to $8646.49, levied in the years 1895, 1896 and 1897, for the payment of judgments against said county. These cases were consolidated and tried together as one case upon an agreed statement of facts before the court without an intervention of a jury, and judgment was entered against the defendants. The cases being taken to the supreme court of the territory that court affirmed the judgment of the district court

to the extent of $276.21 "for reasons stated in the opinion of the court on file."

In the courts below, the railroad companies made no contention against the validity of the judgments or of the debts upon which they were founded, but their contention was that there was no authority of law for the levy of any tax to pay those judgments except within the limits of the tax authorized for current county expenses, and that the levy for county purposes in each of the thre years in which the levies for the judgments were made being up to the limit authorized by statute, there was no room for the levy of any additional special tax for the judgments. This contention was overruled by the district court, but sustained by the supreme court, as will be seen by reference to the opinion of that court, which appears on pages 129 to 134 of the printed record, and which by reference to it in the judgment of the court, on page 127 of the record, seems to be a part of the judgment itself.

The position of the plaintiff as to this defense will be hereinafter definitely stated.

Appellant has made and filed the following:

ASSIGNMENT OF ERRORS.

SUPREME COURT OF THE UNITED STATES.

October Term, 1905.

No. 182.

THE TERRITORY OF NEW MEXICO, *Appellant*,

vs.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, ET AL.

Now comes the appellant and says to the court that

there is manifest error in the record, proceedings and judgment of the supreme court of the Territory of New Mexico, and specifies the following as such errors:

1. The said supreme court erred in failing and refusing to affirm the judgment of the district court in its entirety.

2. The said supreme court erred in holding that there was no authority of law for the levy of a tax for the payment of judgments in excess of three mills per annum authorized by statute for county current expenses and for deficit.

3. The said supreme court erred in holding that any levy for county purposes beyond three mills per annum would be without authority of law.

4. The said supreme court erred in holding, in effect, that the county commissioners had no authority of law to create the indebtedness on which the judgments were rendered.

5. The said supreme court erred in holding, in effect that the levies made for the payment of the judgments were in excess of the power and authority of the county commissioners.

Wherefore appellant prays that the judgment of the supreme court of the Territory of New Mexico be reversed and set aside and this cause remanded to the said supreme court, with directions to affirm the judgment of the district court of Grant county.

A. H. HARLLEE,
FRANK W. CLANCY,
Counsel for Appellant.

Appellant will undertake to establish the following

propositions as controlling and decisive of this case:

First, there is direct statutory authority to levy taxes to pay judgments against counties.

Second, there is no limitation as to rate of tax which may be levied for payment of judgments against counties.

Third, if there is any limit as to levy to pay judgments, the record does not show that it has been reached.

Fourth, no statutory limit as to rate of taxation is applicable to payment of compulsory obligations imposed by the legislature.

POINTS AND AUTHORITIES.

FIRST.

There is direct statutory authority to levy taxes to pay judgments against counties.

The statute of New Mexico on this subject, originally enacted as section 7 of Chap. 1 of the Laws of 1876, by which county commissioners were first brought into existence in New Mexico and now appearing unchanged in the latest Compiled Laws of 1897 as section 657, is as follows:

> Sec. 7. When a judgment shall be rendered against any board of county commissioners of any county, or against any county officer in an action prosecuted by or against him in his official name where the same shall be paid by the county, no execution shall issue upon said judgment, but the same shall be levied and paid by tax as other county charges, and when so collected shall be paid by the county treasurer to the person to whom the

same shall be adjudged, upon the delivery of a proper voucher therefor.

The existence of this statutory authority is not disputed, as we understand, by defendants, but it is contended that when read in connection with other statutory provisions, its effect is greatly limited and narrowed. This will be clearly shown in the discussion of the second and third points of this brief, where we expect to demonstrate, first, that there is no limit upon this power, and, second, if we assume that there is, that it has not been exceeded.

SECOND.

There is no limitation as to rate of tax which may be levied for payment of judgments against counties.

It is obvious from the language of the statutory provision hereinbefore quoted that this position must be correct unless that provision is modified by some other. The opinion of the supreme court of New Mexico asserts that there are such other provisions of law as operate to restrict within very narrow limits the general power to levy taxes for the payment of judgments—indeed, within such limits as to make the power practically of no value,—and we will proceed to examine those other provisions of law, which, it is asserted, have this effect. The first of these is to be found in the tenth subdivision of section 13 of Chap. 1 of the Laws of 1876, which re-appears in the Compiled Laws of 1897 as section 664. This section consists of an enumeration in a number of paragraphs of the powers of the

board of county commissioners. That tenth subdivision reads as follows:

> Tenth, They shall also constitute boards of equalization of taxes and to hear appeals from the action of the assessors who make the assessments; they shall revise the lists of assessment within their respective counties, and shall correct the same, and shall hear and determine all appeals of assessments that may be brought before them, as required by law, and in no event shall the said commissioners levy any assessment of taxes exceeding one per cent.

The supreme court also quotes so much of section 1 of Chap. 2 of the Session Laws of 1874 as provides that property

> shall be subject to an *ad valorem* tax of one per centum upon each dollar of the value thereof, which shall be assessed and collected as is now, or as may be hereafter provided by law for the assessment and collection of taxes, one-half thereof to be applied solely and exclusively for territorial purposes, one-fourth in like manner for county purposes, and the remaining one-fourth to be applied to school purposes.

The court also appears to rely upon section 6 of Chap. 62 of the Session Laws of 1882, which is as follows:

> Sec. 6. There shall be levied and assessed upon the taxable property within this territory in each year the following taxes:
>
> For Territorial revenue, one-half of one per cent.
>
> For ordinary county revenue, one-fourth of one per cent.
>
> For maintenance and support of public schools, one-fourth of one per cent.

Based upon these statutory provisions the learned

court builds up the argument that the limitation of power to levy taxes contained in the tenth subdivision of the section defining the authority of county commissioners, must be held to cover all taxes for all purposes, territorial, county, schools and payment of judgments. The position of plaintiff is that these provisions of law do not necessarily relate to each other, and that the general power to levy and collect taxes for the payment of judgments in the same manner as taxes for other county charges, is a general unlimited power of taxation outside of and beyond any limitation to one per cent. or to one-fourth of one per cent. for county purposes, which the learned supreme court assumes to have been created by the statutes quoted. If there can be any doubt as to the correctness of this position, still, so far as this case is concerned, as will be shown under the third point hereof, the record in this case does not show that the county commissioners have exceeded any limitation which can be plausibly maintained as actually existent.

Any contention which may possibly be made that the language of the statute as to the payment of judgments "by a tax as other county charges" imports into this section any restriction or limitation to the amount of tax authorized for county purposes, which was one-fourth of one per cent., is obviously untenable. The language of the statute undoubtedly refers merely to the manner of collection or machinery to be put in force for the collection, by a levy at the same time and upon a like valuation as for other county charges under the same supervision of county commissioners. In the absence of this provision, such a tax might be levied

at irregular times, thus imposing unusual and unnecessary expense.

We submit that a leading case in this court is conclusive of the position for which we contend. In that case a mandamus was issued to the city of Muscatine to compel the levy of a tax to pay a judgment which had been recovered against the city, and the city made return to the writ that under the laws of Iowa it was not permitted to levy a tax exceeding one per cent. upon the taxable property of the city for all purposes in any one year. By an act of the legislature of Iowa, amending the charter of the city of Muscatine, adopted in 1852, authority was given to the city council to levy a tax of not exceeding one per cent. upon the assessment in any one year. By section 3275 of the Code of 1860, provision was made in case of judgments for the levy of a tax "as early as practicable sufficient to pay off the judgment with interest and costs. These two provisions of law were no more inconsistent with each other than the various statutory provisions quoted and relied upon by the supreme court of New Mexico, and, by the same method of reasoning adopted by that court, would have led to the conclusion that the power to levy a tax for the payment of a judgment against the city of Muscatine must be restricted to the one per cent. limit contained in the act of 1852. Moreover, it might have been urged as an added ground in favor of this position, that the earlier statute was a special law with regard to that city, and should not be considered as disturbed by the general provisions of the Code of 1860. We quote from the opinion of the court the

following language, nearly all of which appears to be directly applicable to the present case.

> These regulations were contained in the Code of 1851, and have been in force ever since. They were re-enacted in the Code of 1860, and have a controlling effect upon the determination of this case. The limitation in the Act of 1852, touching the exercise of the power of taxation by the city council, applies to the ordinary course of their municipal action. Whenever that action is voluntary, and there is no debt evidenced by a judgment against the city, to be provided for, one per cent. is the maximum of the tax they are authorized to impose. But when a judgment has been recovered, the case is within the regulations of the Code. Those provisions are then brought into activity, and operate with full force, until the judgment, interest and costs are satisfied. The limitation in the Act of 1852 has no application in such cases, and imposes no check, if larger taxation be necessary. The contingency is one not contemplated, and not provided for by the Act of 1852. If the legislature had intended to qualify the requirement prescribed by the Code, it is to be presumed it would have done so, in language as clear as that which it has employed to express the duty to be performed. It leaves no room for doubt or construction. Nothing can be more simple and direct than the terms in which the levy of a sufficient tax is enjoined. The extent of the necessity is the only limitation, express or implied, in the Code of the amount to be levied. We cannot interpolate a restriction by importing it from another Act which has no necessary relation to the class of cases for which the code intended to provide. When the judgment is recovered the duty arises, and it can be satisfied only by paying the debt, interest and costs, in the manner prescribed. The source whence the means are to be drawn is described, and full power is given to collect them.

There is no difficulty as to authority to levy a tax of the requisite amount, whatever it may be. Section 3276 of the Code declares that a failure on the part of the officers of the corporation to perform the duty enjoined, shall render them 'personally responsible for the debt.'

In the construction of a statute, what is clearly implied is as effectual as what is expressed. U. S. v. Babbit, 1 Black 61-66 U. S., XVII., 96.

The minutest details could not have made the meaning and effect of these provisions clearer than they are. The limitation in the Act of 1852 is confined to the city of Muscatine. The regulations of the Code are general in their terms, and apply to all the municipal corporations mentioned in section 3274.

If these views be not correct, the position of the judgment creditor is a singular one. All the corporate property of the debtor is exempt by law from execution. The tax of one per cent. is all absorbed by the current expenses of the debtor. There is neither a surplus nor the prospect of a surplus which can be applied upon the judgment. The resources of the debtor may be ample, but there is no means of coercion. The creditor is wholly dependent for payment upon the bounty and the option of the debtor. Until the debtor chooses to pay, the creditor can get nothing. The usual relations of debtor and creditor are reversed, and the judgment, though solemnly rendered, is as barren of results as if it had no existence. Such are the effects which must necessarily follow from the theory, if maintained, of the defendants in error. Nothing less than the most cogent considerations could bring us to the conclusion that it was the intention of the law-making power of so enlightened a State to produce, by its action, such a condition of things in its jurisprudence.

U. S. ex rel v. Muscatine, 8 *Wall.*, 580-1-2.

It has been contended that the Muscatine case just

quoted from was overruled by this court in another case coming up from the state of Iowa. While there may be some plausibility in this suggestion, yet a close examination will show that the change in the decision as made by this court in the later case, was in deference to an adjudication by the supreme court of the state as to the construction of the state statute, which was not in harmony with the views of this court, but which was held inapplicable in the Muscatine case because the state court adjudication was made some years after the creation of the indebtedness under consideration in the Muscatine case. This will be plain fro mthe following quotation:

> It is insisted, however, that in Butz v. Muscatine, 8 Wall., 575 75 U. S., XIX., 490, this court ruled that section 3275 of the Code did give power to the city councils of Muscatine to levy a special tax beyond the statutory limit of ordinary city taxation, sufficient to pay a judgment which had been recovered against the city. This is true. But the facts of that case must be considered. The judgment had been recovered upon bonds issued by the city in 1854. At the time they were issued no decision had been made by the supreme court of the state to the effect that section 3275 was not an enabling statute authorizing a tax beyond that allowed by other statutes. It was not until nine years afterwards that the supreme court of the state was called upon to determine its meaning. Hence this court felt at liberty to adopt its own construction and apply it to the case of the holder of the bonds, though it was adverse to that announced by the state court years after the bonds had been issued. But at the same time it was said, "if the construction given to the statute by the state court had preceded the issuing of the bonds, and become the settled law of the state before that

time, the case would have presented a different aspect."

In the case we have now in hand, it appears that the warrants upon which the relator recovered his judgment, not only were for the ordinary indebtedness of the county, but that they were issued after it had become the settled law of the state, announced in the decisions of its highest court, that the action of the statute relative to executions, now under consideration, did not enlarge the authority of a county board of supervisors, and did not authorize the levy of a tax beyond that provided for in section 710; that is, a tax in excess of the rate of four mills on the dollar. The holders of the warrants were, therefore, informed when they took them, that by the laws of the state no special tax could be levied for their payment, unless the question whether such a tax might be had should first be submitted to the people and by them answered in the affirmative, according to the directions of sections 250 and 252, to which reference has heretofore been made. In this particular the case differs from Butz v. Muscatine. Looking at the difference, we think there is no sufficient reason why we should now depart from the construction which the courts of the state have uniformly given to its statutes.

Supervisors v. U. S., 18 *Wall.*, 82-3.

It must be evident that this Supervisors' case can have no application to our present contention. Prior to the opinion of the supreme court of New Mexico in the present case, there had never been any adjudication in New Mexico that the power to levy a tax to pay a judgment was in any way restricted or limited, and, so far as our courts had spoken at all, the decisions were in the opposite direction.

Laughlin v. County, 3 *N. M.*, 426.

U. S. Trust Co. v. Territory, 10 *N. M.*, 431-2

We feel better satisfied to rely upon the doctrine enunciated by this court when it "felt at liberty to adopt its own construction," although that construction did not conform to that of the state court of Iowa, rather than the later case where this court felt constrained to abandon its own construction, under the circumstances of the case, and apply that of the state court.

The position of the learned supreme court of New Mexico appears to be that the limitation in the act of 1876, restricting the county commissioners to a levy of one per cent., is in harmony with the act of 1882 providing for taxes for territorial, county and school purposes, amounting to one per cent., and that these acts continuing in force, mean a limitation as to the aggregate amount of taxes which could be levied in 1895, 1896 and 1897. A brief consideration of tax legislation after 1882 will show that there is no good foundation for this position.

In 1889 by section 13 of Chap. 32 of the laws of that year, the legislature provided that there should be levied during the fortieth fiscal year, upon each dollar of taxable property, a tax of seven mills on the dollar. No change was made at this time as to the levying of taxes for county and school purposes. If the limitation of one per cent. in the act o 1876 is to be applied as the supreme court of New Mexico insists to all kinds of taxes, in 1895, then, evidently, when the legislature increased the territorial tax from five to seven mills, the county and school taxes would have to be diminshed after 1889.

Again, in 1897, by section 6 of chapter 95 of the

laws of that year, an annual tax of six and one-half mills was provided for territorial purposes, and by section 24 of chapter 25 of the laws of the same year, the territorial auditor was directed annually to levy a tax not exceeding thre mills on the dollar for school purposes, to be apportioned to the several counties. Here, we have legislation providing for taxes not for county purposes up to nine and one-half mills, and if the position and reasoning of the supreme court of New Mexico are sound, there was room left for the levy of only half a mill for ordinary county purposes.

In 1893, by section 20 of chapter 61 of the laws of that year, prior to which time all district court expenses were paid from the territorial treasury, the county commissioners were authorized without any statement of a limit, to levy "a tax upon each dollar of taxable property sufficient to meet the expenses of the district courts"; section 2 of chapter 54 of the laws of the same year, makes an appropriation of twenty-five hundred dollars "and the territorial auditor is authorized and instructed to levy a tax upon the taxable property of the territory during the year commencing March 4, 1894, for the purpose of providing funds for such an appropriation of $2,500;" and section 3 of chapter 61 of the laws of the same year, provides for the levy for territorial purposes of a tax of six mills on the dollar. And yet we are told that the one per per cent. limit of the act of 1876 still applies to all taxes which the county commissioners can order to be collected.

In 1895, by section 4 of chapter 3 of the laws of that year, the legislature levies a tax for territorial pur-

poses of six mills on the dollar, and by section 6 of the same act a tax of one and three-fourths mills for territorial institutions.

The thought which naturally comes to the mind, is that the limitation of one per cent. which county commissioners may levy, can have no relation to the taxes levied by the legislature, but must relate to taxes within within the discretion of the commissioners. This will be discussed under the third point of this brief.

In a well considered but much earlier case in the supreme court of New Mexico, entirely different views are announced from those entertained by that court in the present case. Referring to the revenue act of 1882, hereinbefore mentioned and quoted from, the court speaks as follows:

> When we consider how minute a catalogue of subjects is included in the revenue act in question, it is impossible to believe that the legislative mind intended, while expressly enumerating these, to leave to mere implication the inclusion of other matters of great and special moment, such as the extraordinary power in counties of creating a large debt by popular vote, and the power in the several counties to levy taxes for the payment of judgments. Laws of 1876, ch. 1, sec. 7. The general revenue act contains no express limitation upon the power of taxation. Nevertheless, the provisions of the sixth section, viz., "There shall be levied and assessed upon the taxable property within this territory in each year, the following taxes: For territorial revenue, one-half of one per cent; for ordinary county revenue, one-fourth of one per cent.; for maintenance and support of public schools, one-fourth of one per cent.," may well be construed to imply a restriction on the taxing power, so far as it relates to the subjects specified.

> In the absence of such a restriction, express or implied, the power to contract and to incur public indebtedness implies the power to raise by taxation the funds needed for the execution of the former power. Loan Association v. Topeka, 20 Wall., 655. But the provisions above cited have exclusive reference to taxation for the ordinary purposes of government, the usual disbursements during each fiscal year in the ordinary administration of public affairs. They have no reference whatever to the execution of extraordinary powers under special statutes, and which are wholly outside of the common course of administration. Nashville R'y Co. v. Franklin Co., 7 Am. & Eng. R. R. Cas. 260; McCormick v. Fitch, 14 Minn. 252.
>
> Even an express limitation on the rate of taxation is not generally operative to prevent taxation for extraordinary purposes, as, for instance, that of satisfying judgments against a municipality. Butz v. Muscatine, 8 Wall.; McCracken v. San Francisco, 16 Cal. It could hardly be seriously contended that any of the provisions of the general revenue act operate to limit the special power previously granted to the several boards of county commissioners to levy taxes for the payment of judgments (Laws 1876, ch. 1, sec. 7), or tend to affect the funding acts of the same session.
>
> Laughlin v. County, 3 N. M., 425-6.

The learned judge who wrote the opinion of the court below, appears to rely greatly upon the authority of *United States v. Macon County*, 99 U. S., 582, and, as he states in the opinion, in that case a defense was set up that there was no express statute authorizing the levy of a tax to pay a judgment, but this court held, in substance, that there was authority to levy a tax to pay the coupons upon which the judgment was founded,

and that the creditor did not lose any remedy which he had before judgment by changing the form of the debt. Based upon this adjudication, the learned justice reaches the conclusion that "if no authority existed to make a levy to pay such original claim, then it follows that there was no authority to make a levy to pay the judgment." This is a *non sequitur* of the most patent character, and begs the question which really is whether there is not statutory authority to levy a tax to pay any judgment which may be recovered against a county. The fallacy which underlies the whole opinion is that any indebtedness in excess of the product of the tax of one-fourth of one per cent. for county purposes in any year, is illegal and beyond the power of the county commissioners to create. There is not a word to be found in the legislation of New Mexico to justify this position prior to the year 1897, but it is obvious that any statute of that year has no application to the present case, and, without attempting to quote from the statute commonly called the "Bateman Act," it is sufficient to say that it had only a prospective operation and did not attempt to affect any past transactions.

Laws of 1897, Chap. 42, Sec. 15.

At the time of the enactment of the statute of 1876, in which, alone, is to be found the limitation on the power of the commissioners to levy a tax, it was a matter of such common knowledge in the Territory of New Mexico that the court would take judicial notice of the fact, that many, if not all, of the counties had incurred debts in the course of the management of ordinary county affairs, in excess of their ability to pay

from the collections of the ordinary taxes, and large quantities of county warrants had been regularly issued on account of such indebtedness and were outstanding and unpaid. There can be no doubt that the legislature had this state of things in view in legislating as it did in regard to the payment of a judgment by a tax, and this strengthens our contention that the authority to levy a tax to pay judgments was a special authority for an additional tax beyond and outside of the taxes levied by the legislature.

This state of affairs was recognized by the legislature both before and after 1876, as we will proceed to show, and there cannot be found in the legislation on this subject any suggestion that the debts were invalid.

The second section of chapter 32 of the Laws of 1870 reads as follows:

> Sec. 2. That whenever there shall be offered in payment to such sheriffs or collectors, any legal bond or bonds of the territory or of the county, for any license, fine or assessed tax, etc., they shall be received as current money of the United States, that has been issued on the credit of the territory or county to which such bonds pertain; it being understood that such sheriffs or collectors shall return a list of the names of the persons from whom they have collected any sum of money, and whether the same has been paid in bonds or current money of the United States, provided further, that the bonds of the county shall be received only for taxes pertaining to the county, and bonds of the territory only on taxes of the territory.

The above quotation is from the statutes as printed in English, but attention should be called to the fact, in explanation of the use of the words "bonds," that this statute, as was not uncommon at that time, was passed

originally in Spanish, the original version being the authorized one by New Mexican statute, and the words in Spanish clearly mean warrants of the counties and not bonds in the strict sense of the term. It is probable that, in 1870, there were no county bonds in existence in New Mexico. The statute which makes the Spanish version of this act the authoritative one, will be found in section 1 of chapter 1 of the laws of 1874, and reappears as section 3800 of the Compiled Laws of 1897, and reads as follows:

> Sec. 1. That hereafter in the construction of the statutes of this Territory, whether the same be of the "Compiled Laws," "Revised Statutes," or of the "Session Laws," the language in which the said law was originally passed, shall govern, whether it be in Spanish or English; and no part of said statutes which may be shown by said "Compiled Laws," "Revised Laws," or "Session Laws," to be only the translation of the law originally passed, whether in Spanish or English, shall be taken into consideration by any court of this territory, in making any ruling, or decision, based on any statute of this territory.

Section 11 of Chap. 22 of the Laws of 1872 is as follows:

> Sec. 11. That the collectors of revenue provided in virtue of this act shall receive territorial and county warrants in payment of territorial and county taxes: provided that the part of the assessment for school purposes shall be paid entirely and exclusively in legal money of the United States, and further provided, that the collectors and assessors shall receive as full compensation for their services in collecting and assessing the sum of five per centum of the sum so assessed and collected.

This statute shows the existence of outstanding

county warrants which could not be paid, but which the legislature required to be received at their face value for taxes.

Chapter 4 of the Laws of 1874, which is entitled "An Act with reference to county warrants," is as follows:

> Sec. 1. That hereafter, whenever in any county of this territory, there shall not be sufficient funds in the treasury of any county, to complete the erection of any court house, or jail, in said county, and it shall become necessary to issue the warrants of said county for the deficiency, or the whole thereof, the probate judge issuing the same may authorize said warrants to draw interest, at a rate not exceeding ten per cent. per annum, which shall be fixed by said probate judge, and included in said warrants, and all warrants heretofore issued in any county of this territory, for the purposes aforesaid, and drawing a rate of interest, are hereby approved and made valid.

Chapter 14 of the Laws of 1878 is entitled "An Act regulating the manner in which outstanding indebtedness of the several counties of the territory shall be paid and for other purposes." We quote two sections from that act:

> Sec. 2. All warrants hereafter drawn on the treasury of any county of the territory shall be presented to the treasurer for payment, and if there be no sufficient funds in the treasury to pay the same, the treasurer shall indorse thereon the words "not paid for the want of funds," with the date of the presentation, signing the name thereto, and he shall at the same time, register the same in a book to be kept for that purpose, and shall note thereon the number, date of issue, date of registry, in whose favor drawn, and the amount thereof, and all such warrants shall bear interest

from the date of their registration at the rate of three per cent. per annum.

Sec. 3. All warrants now outstanding, and all warrants hereafter drawn shall be paid in the legal tender currency of the United States, and shall be paid in the following order: First, the interest bearing warrants shall be paid in the order of the date of their registration; Second, the warrants not bearing interest now outstanding, shall be paid and in the order of the date of their issue; Third, the warrants hereafter issued shall be paid and in the order of their date of their registration; provided, all warrants now outstanding not bearing interest, shall bear interest at the rate of three per cent. per annum, after six months from their date; provided further, that all county warrants shall be received in payment of county licenses and county taxes.

Section 49 of chapter 62 of the Laws of 1882 is as follows:

Sec. 49. All taxes shall be paid in lawful money of the United States; provided, that the treasurer shall receive as cash, in payment of the territorial taxes auditor's warrants, and in payment of county taxes county warrants, duly issued.

Section 1 of chapter 65 of the laws of the same year 1882, and the first sentence of section 4 of the same act, are as follows:

Sec. 1. The county commissioners of the respective counties of this territory are hereby authorized to issue bonds of said counties in exchange for the outstanding warrants thereof, and the interest accrued and unpaid thereon.

Sec. 4. At any time after the passage of this act the holder of any warrants of any county, heretofore issued by the county commissioners, and at any time after the first day of July, 1882, the holder of any warrants of any county issued between

the passage of this act and the first day of July, 1882, amounting to one hundred dollars or more, may apply to the probate clerk of such county for bonds of the kind hereinbefore described in exchange for such warrants and the interest accrued thereon, and it shall thereupon become the duty of the county commissioners to issue bonds as aforesaid and deliver the same to the holder of such warrants.

Chapter 62 of the Laws of 1884 contains the following:

Sec. 1. When any warrant or order, regularly and lawfully drawn upon the treasurer of this territory, or the treasurer of any county in this territory, or the treasurer of any municipal government in this territory, is presented for payment and such treasurer has not the funds with which to meet such demand, such treasurer shall register such warrant or order in the manner hereinafter provided.

Sec. 2. Any warrant or order drawn upon any treasurer contemplated by the foregoing section of this act, if not paid when presented for the want of funds, shall be registered in the order of its presentation in a book to be kept for that purpose.

Sec. 4. The register contemplated by this act shall contain the number of the warrant or order, date of presentation, the amount for which and in whose favor drawn. Such register shall be open to the inspection of the public at all reasonable times during the business hours of the day.

Sec. 5. The treasurer shall set apart from the public funds, as fast as they accrue, the full amount of each warrant or order in the order in which they appear on such register, and payments shall be made in the order in which such warrants or orders are registered.

Chapter 46 of the Laws of 1887 contain the following:

Sec. 6. All persons holding any county warrants on the first day of May, A. D. 1887, may on or before the first day of July, A. D. 1887, report the same to the treasurer of the county, giving him the number and date of such warrant, the amount thereof, and the name of the person in whose favor the same was drawn, and it shall be the duty of the treasurer of each county to prepare and keep a well bound book, with proper headings and rulings, in which he shall make a record of each county warrant outstanding on the first day of May, A. D. 1887, in the order in which the same may have been issued, stating, in such record the number of the warrant, and date thereof, the name of the person in whose favor drawn, and the amount thereof, and such warrants shall be paid by the treasurer of the county, at his office, in the order of their issue, with six per cent. interest.

Chapter 15 of the laws of 1889 has the following section:

Sec. 1. That from and after the passage of this act it shall be unlawful for any county commissioner, sheriff, treasurer, assessor, probate judge, probate clerk or any other person who as principal or deputy, holds any county office in any county of this territory, to either, directly or indirectly, buy, sell, barter, deal in or speculate in or with any certificate, warrant or other evidence of indebtedness issued by such county or by the territory of New Mexico, except such certificate, warrant or other evidence of indebtedness shall have been lawfully issued to such person in payment of his salary or in compensation for services rendered by such person or for supplies furnished by him to such county or territory.

The first sentence of section 1 of Chap. 68 of the Laws of the same year, 1898, is as follows:

Sec. 1. The county commissioners of the respective counties of this territory are hereby au-

thorized and empowered to issue coupon bonds of the said counties in exchange for their outstanding indebtedness as evidenced by the warrants or bonds of said counties duly issued, which has now accrued or may accrue up to the first day of July A. D. 1889.

In the face of these repeated legislative recognitions of the existence of county indebtedness, for the payment or funding of which provision is made, there is no room for the contention that there was any legislative intent to restrict the power of counties to create valid indebtedness to the amount realized from the authorized taxes for county purposes. The legislature undoubtedly considered these debts authorized and valid. If they were valid, they would constitute the basis for judgments against the counties, and upon judgment being obtained the county would be compelled to levy a tax sufficient to pay the judgment, or the provision of law upon that subject is entirely meaningless.

THIRD.

If there is any limit as to levy to pay judgments, the record does not show that it has been reached.

We do not wish to be understood as conceding that there is any statutory limit upon the power to levy taxes for the payment of judgments, as we insist that there is no such limit. If it can be imagined, however, that the limitation expressed in the act of 1876, as to the power of the county commissioners to levy taxes, has any connection whatever with the authority to levy a tax to pay a judgment, it is easily demonstrable that that limitation cannot be so construed as to prevent

the county commissioner from levying for judgments a tax not included within the one-fourth of one per cent. specifically levied for county purposes by the legislature, but must refer to something as to which the county commissioners at that time had some power and discretion. We assert that the only such thing then in existence was the power to levy a tax for the payment of judgments, and if this limitation refers to that, the record in this case does not show that the limit has even been reached.

A review of New Mexican legislation on the subject of taxation, will disclose the fact that when the act of 1876 was passed, no local county officer had authority to levy any taxes. It is undoubtedly true that in New Mexico, as in many other jurisdictions, the words "levy" and "assess" in connection with matters of taxation, appear to be used indiscriminately and with but little regard to their original definite meanings, and it is not intended here to make any argument based upon narrow or technical meaning of words. What is intended, is to assert that no county authority had power between 1870 and 1876 to make any order levying a tax of any kind. Such an authority is to be implied from the act of 1876 creating county commissioners, although not there expressed in direct terms.

Four sections of chapter 18 of the Laws of 1870 will show the system which formerly prevailed in New Mexico, and those sections are as follows:

> Sec. 1. All real and personal property, not otherwise exempted by this act, shall be subject to an *ad valorem* tax of twenty cents upon each one hundred dollars value of the same, for territorial purposes, which shall be assessed and paid as here-

inafter provided, and all property situated, respectively, in each county, shall be subject to pay a county tax of five cents upon each one hundred dollars value of the same, which shall be assessed, levied and paid, as hereinafter provided, for county purposes.

Sec. 8. Every ppraiser is required to provide himself annually with two books, well bound, the cost of which shall be paid respectively by the treasurers of the territory and of the county, under the direction of the auditor of public accounts, and the probate judge, which shall be used by said appraisers as a register in which they shall enter alphabetically the names of all persons whose property has been appraised, showing whether the oath of such persons has been given for themselves or as attorney, agent, or custodian of the property of another person, the amount sworn to, and the amount of tax or impost thereon, together with such remarks opposite each name as may be necessary, and at the expiration of the time fixed for making such appraisements, it shall be the duty of the appraiser to make a general summary of his appraisements in said registers, and certifying to the same under oath.

Sec. 9. It shall be the duty of the appraisers within their respective counties, fifteen days before the first Monday of May in each year, to diligently seek out all and every one of the persons who through oversight, negligence, or willfully, has failed to make the proper returns of the valuation of their property, as required by this act, and if it appears that such person or persons have so failed, it shall be the duty of the appraisers to proceed to make a valuation of said property, as hereinbefore provided; it being understood that having closed or completed the valuation of their county, it shall be their duty to present their books to be examined and corrected by the probate judge and the board hereinbefore mentioned, with

> regard to the proper amounts of tax and immediately to send one of said books to the auditor of public accounts, and after having deposited the other with the public records of his office, he shall furnish the sheriff of his county together with an order of the said court under the seal thereof, directing him to collect from each person the sums placed opposite their names respectively, which decree or order from the probate court shall have the force of an execution in every case of levy of taxes.

From this statute, it will be seen that the legislature, in effect, made the levy of taxes, declaring what property should be subject to taxation and fixing the rate. The local authorities were intrusted with a making of the valuation or assessment of the property and an order to the sheriff, who was ex-officio collector of taxes, to collect the tax upon the persons and property thus assessed. No discretion as to the amount or rate of the tax was delegated by the legislature.

Section 6 of Chap. 22 of the Laws of 1872 is as follows:

> That hereafter all real and personal estate, excepting five hundred dollars from articles two to seven of the revenue law passed January seventeen, eighteen hundred and seventy, shall be subject to *ad valorem* tax of one cent or one per-centum upon each dollar of the value thereof which shall be assessed and collected as is now or as may hereafter be provided for the assessment and collection of taxes, one-half per centum to be applied solely and exclusively for territorial purposes and the remaining one-half per centum to be applied in like manner for county and school purposes in the county wherein the same is collected —that is to say, twenty-five cents for county purposes and twenty-five cents for schools: provided,

there shall be deducted the indebtedness of those owing taxes.

There was some legislation on the subject contained in Chapter 2 of the Laws of 1874, making, however, no substantial change in the methods of levying the tax, valuing the property and making collections.

In 1876, the legislature passed an act, which appears as Chapter 17 of the laws of that year, which, as to the amount of tax, after having enumerated in the previous section, the kinds of property exempt from taxation, merely provides that "all other property of whatsoever description, shall be assessed and taxed as now provided by law." The remainder of this act is devoted principally to details of how returns shall be made to the assessor and as to the duties of the assessor in making up his lists, but the first paragraph of section 6 is as follows:

> Sec. 6. The several assessors shall, whenever they shall change or increase the list returned by any person, or increase the amount of any assessment; give the person interested notice in writing of such change; by depositing in the postoffice addressed to such person at his or her usual place of residence or business, a written or printed notice of such change, immediately after changing the assessment. And shall immediately after the time fixed herein, within which returns may be made, deliver an alphabetical list of the names of each person liable to pay a tax, and the amount of tax for which such person may be liable, to the board of county supervisors, who shall examine, revise and correct the same, and endorse their order thereon to the proper collector for the collection thereof. Which order, shall have the same effect in all respects, as an execution against each person named in such list for the amount of tax due from

> such person. And if the board of supervisors shall increase the amount of any assessment, the clerk of the board shall give notice of such change to the person interested in the manner above provided.

Although mention is made in this section of "county supervisors," yet that must be taken as referring to the county commissioners, as there never have been any supervisors *eo nomine* in New Mexico, and the county commissioners came into existence under another act of the same session, approved one day earlier than the one from which the above quotation is made, and appearing as chapter 1 of the Laws of 1876. In section 14 of that act occur two clauses relating to taxes, and we quote as follows:

> Sec. 14. The board of county commissioners shall have power at any session.
>
> * * * * *
>
> Fourth, To apportion and order the collection of taxes by law.
>
> * * * * *
>
> Tenth, They shall also constitute boards of equalization of taxes and to hear appeals from the action of the assessors who make the assessments; they shall revise the lists of assessment within their respective counties, and shall correct the same, and shall hear and determine all appeals of assessments that may be brought before them, as required by law, and in no event shall the said commissioners levy any assessment of taxes exceeding one per cent.

It has been held that the apportionment of taxes consists in a selection of the subjects to be taxed and in laying down the rule by which to measure the contribution

which each of these subjects shall make to the tax, and that therefore it is a matter of legislation.

Barbehl v. Gleason, 111 Ky., 491.

It is obvious that the language of the paragraph above quoted, giving the county commissioners power to apportion taxes, cannot have this meaning. The legislature in New Mexico has never attempted to delegate this legislative function to the county commissioners, but has always declared what were the subjects of taxation, and, until a comparatively recent period, definitely fixed the rates, with the exception of what might be levied for the payment of judgments.

From the tenth subdivision as above quoted, it is clear that there was a legislative intent that the commissioners should levy taxes, but nowhere in that act nor in any other earlier or contemporaneous act, did the legislature commit anything of that kind to the discretion of the commissioners except in the section next quoted.

Section 7 of the same act is as follows:

> Sec. 7. When a judgment shall be rendered against any board of county commissioners of any county, or against any county officer in an action prosecuted by or against him in his name where the same shall be paid by the county, no execution shall issue upon said judgment, but the same shall be levied and paid by tax as other county charges, and when so collected shall be paid by the county treasurer to the person to whom the same shall be adjudged, upon the delivery of a proper voucher therefor.

The position of the court below appears to be that, practically, there is nothing to be found in later legislation in any way affecting or modifying these provisions

of the law of 1876; that the county commissioners by that act were authorized to levy all taxes, but were limited to a total of all levies for all purposes to one per cent., although the legislature had already made an absolute levy of one per cent., and that this one per cent. must include anything which might be levied for the payment of a judgment. While it seems that the commissioners were authorized by this act to make levies, it does not follow, it cannot follow, that the one per cent. levied by the legislature should include a levy made for the payment of judgments. No change was made by the legislature in the antecedent legislation which absolutely levied a tax of one percentum upon all property subject to taxation, of which one-half was to be applied to territorial purposes, one-fourth to county purposes and one-fourth to school purposes in the county. The legislature made this levy and the county commissioners had no control over it nor any discretion about it. The prohibition as to how much the commissioners should levy, must refer to something else, and it can refer to nothing except the levy authorized to pay judgments.

In 1882, section 6 of Chap. 62 reads as follows:

> Sec. 6. There shall be levied and assessed upon the taxable property within this territory in each year the following taxes:
>
> For territorial revenue, one-half of one cent.
>
> For ordinary county revenue, one-fourth of one per cent.
>
> For maintenance and support of public schools, one-fourth of one per cent.

It will be seen that this act of 1882, which is the last referred to in the opinion of the court below, and

upon which, curiously enough, that court seems to base its decision in great part, leaves the law just as it was before. The commissioners remained vested with some discretionary power to levy taxes up to one per cent., while the legislature, itself, makes this general levy of one per cent. for territorial, county and school purposes. The limitation on the power of the county commissioners to levy taxes clearly can have no reference to this general tax of one per cent. levied by the legislature with the levying of which the county commissioners have nothing to do beyond seeing that it is properly spread upon the tax rolls. Does it not, then, follow irresistibly that the limitation of one per cent. is as to the tax to be levied for the payment of judgments? The record does not disclose that the levies complained of for payment of judgments come up to this one per cent. thus limited. The levy for the payment of judgments in 1895 was three and a half mills, in 1896 four and a half mills, but it does not appear how much was the levy for judgments in 1897.

Printed Record, Page 43.

FOURTH.

No statutory limit as to rate of taxation is applicable to payment of compulsory obligations imposed by the legislature.

It will undoubtedly be conceded that the judgments, for the payment of which taxes were levied, were based upon what may be properly termed "compulsory obligations" imposed upon the county by the legislature. It would be a waste of time and space to attempt here to collect together all of the legislation to show

the correctness of this statement. The character of the indebtedness is sufficiently shown in the twenty-second subdivision of the agreed statements of facts, near the foot of page 45 of the printed record, and it must suffice here to assert that all of such expenses were incurred in pursuance of statutory direction and requirement, as to which the county had no power or discretion. This being so, the position of appellant is that any antecedent statutory limitation as to the power to tax, the observance of which would result in inability fully to discharge the duties imposed by later legislation, must be considered as abrogated by the same legislature which had created it.

The supreme court of New Mexico appears to rely upon the doctrine of the case of *Lake County v. Rollins*, 130 *U. S.*, 662, as sustaining its decision, but apparently no attention was given to the fact that that case turned upon the existence of a constitutional prohibition as to the creation of indebtedness, wherefore it was held, in effect, that the legislature could not, under the constitution, impose any compulsory obligation upon a county by which a valid indebtedness in excess of the constitutional limit would be created. In the present case, absolutely no question whatever in the nature of a constitutional limitation, is raised by the record, and it is obvious that a statutory limitation is of an entirely different character, and when the legislature forces upon counties the duty of providing for expenses which will create indebtedness in excess of a statutory limit, it must be held that the legislative intent is to disregard the limit which it had previously expressed. This is not unlike the doctrine as to the estoppel arising from

the recital in municipal bonds of full compliance with statutory requirements where no question of constitutional provisions comes in, even though the recitals may be untrue as matter of fact.

Hedges v. Dixon County, 150 *U. S.*, 187.
Dallas County v. McKenzie, 110 *U. S.*, 687.

The language of the learned judge who decided the Lake County case in the Circuit Court (34 *Fed. Rep.*, 850), is so clearly applicable to the present case that we cannot do better than to quote therefrom:

> The other class of debts springs from neither the voluntary nor the tortious acts of county officials. The county has neither voice nor opportunity in the matter. They are imposed by the legislature, and are generally such as affect the state at large as well as the county.
>
> It is well here to stop a moment, and consider what a county is. In one aspect, it is an independent corporation having peculiar private interests and concerns. The management of those interests and concerns is, as a general rule, confided to the county officials; and the debts incurred in the management of those private affairs are created by the voluntary contracts of these officials. In another aspect, the county is but a mere subdivision of the state, and only determines locally the administration of those affairs which affect the people of the state as a whole. Take the administration of justice in the courts, the matter of elections, the preservation of the public peace, and matters of a kindred nature. They are not purely private concerns of the county. They affect vitally and largely the interests of the state as a whole. It is common elsewhere, it was and is the case here, that the cost of these public services is cast largely upon the county. Not upon the county as an independent corporation, and solely interested in

and benefited by said services, but as a portion of the state, and as such portion thus contributing to the general welfare. In the creation of debt for these services the county is not consulted, It has no voice in saying when they shall be incurred or to what extent. I know the line of demarcation is not preserved with absolute uniformity, but the general character of the difference between contractual and compulsory obligations is as I have said. This is a matter of common knowledge, and must have been within the contemplation of the framers of the constitution. Was it their intent to relieve the county of liability for these "compulsory obligations" when in any manner the general limit of indebtedness had been reached? See what that would imply. The possibility that county commissioners by extravagance might largely impair, even practically defeat, the administration of justice, the preservation of peace, and even the holding of elections. For public service without expectation of any pay, is seldom done, or, if done, only poorly. Will a constable serve processes, will a sheriff, at personal risk, preserve the peace; will a county attorney prosecute with vigor and interest; will juror or witness attend, giving up private interests for public good—with the knowledge that these, their services, are gratuitous, and will receive no compensation?

We desire to invoke also as specially applicable, the doctrine established by this court, that the authorization of expenditures by municipal corporations implies and carries with it the pawer to raise money by taxation to meet such expenditures. The following quotation will sufficiently show this rule:

> . . The position that the power of taxation belongs exclusively to the legislative branch of the government, no one will controvert. Under our system it is lodged nowhere else. But it is a

power that may be delegated by the legislature to municipal corporations, which are merely instrumentalities of the state for the better administration of the government in matters of local concern. When such a corporation is created, the power of taxation is vested in it as an essential attribute, for all the purposes of its existence, unless its exercise be in express terms prohibited. For the accomplishment of those purposes, its authorities, however limited the corporation, must have the power to raise money and control its expenditure. In a city, even of small extent, they have to provide for the preservation of peace, good order and health, and the execution of such measures as conduce to the general good of its citizens; such as the opening and repairing of streets; the construction of sidewalks, sewers and drains; the introduction of water, and the establishment of a fire and police department. In a city like New Orleans, situated on a navigable stream, or on a harbor of a lake or sea, their powers are usually enlarged, so as to embrace the building of wharves and docks or levees for the benefit of commerce, and they may extend also to the construction of roads leading to it, or the contributing of aid towards their construction. The number and variety of works which may be authorized, having a general regard to the welfare of the city or of its people, are mere matters of legislative discretion. All of them require for their execution considerable expenditures of money. Their authorization without providing the means for such expenditures would be an idle and futile proceeding. Their authorization, therefore, implies and carries with it the power to adopt the ordinary means employed by such bodies to raise funds for their execution, unless such funds are otherwise provided. And the ordinary means in such cases is taxation. A municipality without the power of taxation would be a body without life, incapable

of acting, and serving no useful purpose.
United States v. New Orleans, 98 U. S., 392-3.

It is respectfully submitted that the judgment of the supreme court of New Mexico ought to be set aside, and this cause remanded to that court with directions to affirm the judgment of the district court of Grant County.

A. H. HARLLEE,
FRANK W. CLANCY,
Counsel for Appellant.

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Supreme Court of the United States

OCTOBER TERM, 1905.

No. 182.

TERRITORY OF NEW MEXICO, APPELLANT.

vs.

ATCHISON, TOPEKA & SANTA FE RAILROAD COMPANY, ET AL.

Additional Assignments of Error.

Now comes appellant, and specifies the following as additional assignments of error herein:

6. The Supreme Court of New Mexico erred in failing to hold that plaintiff and appellant was entitled to interest at the rate of twenty-five per centum per annum on its judgment from October 9, 1902.

7. The said Supreme Court erred in failing to hold that plaintiff was entitled to interest at the rate of twenty-five per centum per annum, upon so much of the judgment of the district court as was affirmed, from October 9, 1902.

Wherefore appellant prays that the judgment of said Supreme Court of New Mexico be reversed and this cause remanded to said Supreme Court with directions to affirm the judgment of the district court of Grant County with interest at the rate of twenty-five per cent per annum from October 9, 1902.

FRANK W. CLANCY,
Counsel for Appellant.

Brief on Additional Assignments of Error.

A similar point to the one thus raised, was presented to this court in a former case from New Mexico, and was decided against the Territory, ~~finally~~ purely upon equitable grounds which can have no application to the case now submitted.

The statute of the Territory on the subject is to be found in Section 4066, of the Compiled Laws of 1897, as follows:

> On the first day of January, in each year, half of the unpaid taxes for the year past, and on the first day of July in each year, the remaining half of the unpaid taxes for the year past, shall become delinquent, and shall draw interest at the rate of twenty-five per cent per annum, but the collector shall continue to receive payments of the same after the first day of January and July, until the day of the sale.

In the former case, above referred to, the Territory claimed interest from the date of delinquency. It was claimed that there had been later legislation in 1899, doing away with this

interest on taxes, even prior to 1899, but this court said that this might be doubtful, and held in substance, that the character of the assessment was such as to justify resistance, and that it would be inequitable to impose penalties for non-payment.

U. S. Trust Co. v. New Mexico, 183 *U. S.*, 544.

No such circumstances exist in the present case, and while the plaintiff might have been content with its judgment, as rendered in the district court if it could have had it three years ago, it is not now cut off from claiming this interest from the date of that judgment in October, 1902.

FRANK W. CLANCY,
Counsel for Appellant.

FILE COPY.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1905.

THE TERRITORY OF NEW MEXICO,
Appellant,
vs.
THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, THE RIO GRANDE, MEXICO AND PACIFIC RAILROAD COMPANY AND THE SILVER CITY, DEMING AND PACIFIC RAILROAD COMPANY,
Appellees.

No. 182.

APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF NEW MEXICO.

BRIEF AND ARGUMENT FOR APPELLEES.

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STATEMENT.

The appellant instituted three separate actions against each of the appellees in the District Court of Grant County, New Mexico to recover certain taxes alleged to be due on account of a levy to pay certain judgments against the county, and also on account of an increase in the valuation of appellees' property,

which was contested, the balance of the taxes being paid by appellees. The cases were consolidated and submitted to the District Court upon what purported to be an "agreed statement of facts," which, however, set out at large the returns of the appellees and extracts from the records of the Board of County Commissioners and the Board of Equalization with certain exhibits showing the assessment made of the railroad property and other matters of an evidentiary nature. It was stipulated that a jury be waived and that the court might try and pass upon the issues in said cases upon said agreed statement of facts and the several exhibits thereto attached. (Transcript, page 97.)

It appeared from this statement, however, that all of the judgments for which levies were made were based upon claims against the county for general current expenses of the same, and not upon any bonded indebtedness. (See paragraph 8, page 88; paragraph 10, page 89; paragraph 12, page 90 and paragraph 21, page 94, Transcript.)

It also appears that for the years 1895, 1896 and 1897 the Board of County Commissioners made special levies for said years to pay such judgments in excess of the statutory limit of 2½ mills for county current expenses and ½ of 1 mill for deficit, defendant contending that such special levies so in excess were unauthorized and illegal. The levy for 1895 was 6.5 mills on the dollar for county purposes; 2.5 mills on the dollar for school purposes; 3.20 mills on the dollar for court fund; and 3.50 mills for payment of judgment of A. B. Laird; 6 mills for territorial purposes and 1.75 mills for ter-

ritorial institution fund; and 50/100 mills on the dollar for cattle indemnity fund. (Record, page 82.)

For 1896 the tax levy was 6-55/100 mills on the dollar for county purposes; 2½ mills for school purposes; 4-50/100 mills for judgments; 3 mills for special school precinct No. 11; 3 mills for special school precinct No. 24; 3-20/100 mills for county fund; and 8-25/100 mills for various territorial funds. (Record, page 83.)

For the year 1897 the tax levy was 16-50/100 mills for county purposes; 2½ mills for school purposes; 3-20/100 mills for court fund and 12-30/100 mills for various territorial funds; and 2-50/100 mills for public schools. (Record, pages 83 and 84.) The levy of 16-50/100 mills for county purposes in 1897 included a levy for the payment of judgments. (Record, page 92, paragraph 15; page 94, paragraph 20.)

Defendant also contested that part of the claim of the county which amounted to $276.21 on account of an increase by the Board of Equalization in the valuation of the railroad property.

On October 9, 1902, the District Court found in favor of the county and rendered judgment against appellees for $5,156.71, together with interest thereon at the rate of 6 per cent. per annum from that date and costs of suit. (Transcript, page 122.) In this amount there was embraced the claim of the county on account of increase in the valuation of the appellees' property amounting to $276.21 with interest and costs, which amount, as before stated, was contested in said District Court by appellees.

Appellees sued out a writ of error to the Supreme

Court of the territory and the latter court affirmed the judgment of the District Court to the extent of $276.21, and entered a judgment for said amount, for the reasons stated in the opinion of the court on file. (Transcript, page 127.)

From the opinion of the court it appears that the judgment of the District Court was reversed so far as involved rendering judgment against the defendant railroad companies in respect to taxes levied upon the judgments against the county. (Transcript, page 133.)

Thereupon the territory prayed an appeal to this court from the judgment of the Supreme Court of the territory, which appeal was granted by the Supreme Court of the Territory.

The Supreme Court of the territory made no findings of its own in the nature of a special verdict. The agreed statement of facts is duplicated in the record.

The record contains no assignment of errors on behalf of appellant.

The opinion of the Territorial Supreme Court is found in Record, pages 129 to 134, inclusive, and is also reported in 72 Pac. Rep., 14.

POINTS AND AUTHORITIES.

I.

AS THE AGREED STATEMENT OF FACTS DID NOT SET OUT THE ULTIMATE FACTS, BUT MERELY EVIDENTIARY MATTERS, AND AS THE TERRITORIAL SUPREME COURT MADE NO STATEMENT OF FACTS IN THE NATURE OF A SPECIAL VERDICT, THERE IS NOTHING FOR THIS COURT TO REVIEW ON APPEAL.

See Sec. 2 of the Act of April 7, 1874, 18 U. S. Statutes at Large, page 27;

U. S. Trust Company v. *New Mexico*, 183 U. S., 535;

Wilson v. *Merchants' Loan & Trust Company*, 183 U. S., 121;

Grayson v. *Lynch*, 163 U. S., 468.

II.

THE MATTER IN DISPUTE COMPLAINED OF BY APPELLANT UNDER THE JUDGMENT OF THE TERRITORIAL SUPREME COURT WAS LESS THAN FIVE THOUSAND DOLLARS, AND THIS COURT IS WITHOUT JURISDICTION.

See Sec. 702, U. S. Revised Statutes, as amended by the Act of March 3, 1885, Chapter 355;

Nagle v. *Rutledge*, 100 U. S., 675.

Wilson v. *Kiesel*, 164 U. S., 251.

III.

THE LEVY OF A SPECIAL TAX BY THE COUNTY COMMISSIONERS TO PAY JUDGMENTS AGAINST THE COUNTY, BASED UPON CLAIMS FOR GENERAL CURRENT EXPENSES OF THE COUNTY, IN EXCESS OF THE LIMIT OF TWO AND ONE-HALF MILLS FOR COUNTY CURRENT EXPENSES AND ONE-HALF OF ONE MILL FOR DEFICIT, WAS EXCESSIVE, UNAUTHORIZED AND ILLEGAL.

See Sec. 1, Chap. 2, pages 18 and 19, Laws of New Mexico, 1873-1874;

Chap. 1, Laws of New Mexico, 1875-1876, Sec. 7, page 19 and Sec. 14, pages 20 and 21;

Sec. 6, Chap. 62, page 11, Laws of New Mexico, 1882;

Sec. 2, Chap. 68, Laws of New Mexico, 1889, pages 141 and 142;

Commissioners of Osborne County v. *Blake,* 25 Kan., 356;

Supervisors v. *U. S.,* 18 Wall., 71;

G. I. & N. W. R. R. v. *Baker,* 45 Pac., 494, 502, 503;

State ex rel. Young v. *Royse et al.,* 91 N. W., 559;

C. & A. R. R. v. *People,* 177 Illinois, 91;

27 Am. and Eng. Encyc. of Law, 2nd Ed., page 877, note 4, and page 878;

Corbett et al. v. *City of Portland et al.,* 48 Pac. 428;

2 Desty on Taxation, page 1064.

IV.

A STATUTE CONFERRING AUTHORITY TO IMPOSE TAXES MUST BE STRICTLY CONSTRUED.

1 Desty on Taxation, page 257, and page 473.

ARGUMENT.

I.

AS THE TERRITORIAL SUPREME COURT MADE NO STATEMENT OF THE FACTS OF THE CASE IN THE NATULE OF A SPECIAL VERDICT, THE CASE HAVING BEEN TRIED IN THE DISTRICT COURT WITHOUT A JURY, THERE IS NOTHING FOR THIS COURT TO REVIEW ON APPEAL.

The case, although an action at law, having been tried by the District Court without a jury, the appellate jurisdiction of this court is invoked by appeal under Section 2 of the Act of April 7, 1874 (18 U. S. Statutes at Large, 27), but in that section it is provided that

"on appeal instead of the evidence at large a statement of the facts in the case in the nature of a special verdict, and also the rulings of the court on the admission or rejection of evidence when excepted to, shall be made and certified by the court below, and transmitted to the Supreme Court together with the transcript of the proceedings and judgment or decree."

That provision requires the Supreme Court of the Territory to state the *ultimate* facts in the case, and if we are to assume that the Territorial Supreme Court accepted and adopted what purports to be in the record an agreed statement of facts, yet on examination we find such agreed statement to be a statement merely of evidentiary facts or matters, with various exhibits attached thereto, from which the court would have to determine the ultimate facts in the case,—those facts which it would be necessary to state in the pleadings as the basis of the cause of action or defense.

It was held by this court in *United States Trust Company* v. *New Mexico*, 183 U. S., 535, construing the above act of Congress, that an agreed statement of facts setting out evidentiary matter, and referring to exhibits similar to the ones in this case, even when adopted as its statement by the Territorial Supreme Court, was not a sufficient compliance with the above law and presented nothing for the examination of this court.

To the same effect see *Wilson* v. *Merchants' Loan and Trust Company*, 183 U. S., 121; *Grayson* v. *Lynch*, 163 U. S., 468.

Upon this ground the judgment of the territorial Supreme Court should be affirmed.

II.

AS THE MATTER IN DISPUTE ON THIS APPEAL UNDER THE JUDGMENT OF THE TERRITORIAL SUPREME COURT DID NOT EXCEED FIVE THOUSAND DOLLARS THIS COURT IS WITHOUT JURISDICTION.

Under Section 702 of the U. S. Revised Statutes, as amended by the Act of March 3, 1885, Chapter 355, the final judgments and decrees of the Supreme Court of New Mexico may be reviewed and reversed or affirmed in this court on writ of error or appeal in the same manner and under the same rule as the final decrees of a Circuit Court, but no appeal or writ of error shall be allowed from any judgment or decree in any suit at law or in equity in the Supreme Court of such territory "unless the matter in dispute exclusive of costs shall exceed the sum of five thousand dollars."

On October 9, 1902, the District Court of Grant County rendered its judgment in favor of appellant and against appellees for $5,156.71, with interest thereon at the rate of 6 per cent. per annum from the date of judgment, and costs of suit. In the above judgment there was included the claim of the county amounting to $276.21, with interest, on account of taxes arising from an increase in the valuation of defendants' property, payment of which was also resisted by defendant.

On February 26, 1903, four months and seventeen days after the rendition of the judgment in the District Court the Supreme Court sustained the judgment in respect to the claim for $276.21, as that claim was not then resisted by the railway companies, but declined to render judgment for the balance of the claim.

This left therefore as disputed at the date of the rendition of the judgment in the Supreme Court of the Territory only the claim of appellant under the judgment of the District Court for the balance, which amounted to $4,880.50 with 6 per cent. interest per annum thereon from October 9, 1902, until the date of the judgment of the Supreme Court, which would make the total claim then in dispute amount at most only to $4,991.93. The matter in dispute, therefore, exclusive of costs, as to appellant upon the rendition of the judgment of the Supreme Court which is complained of by it was less than $5,000.

The "matter in dispute" means the matter in dispute under or in respect to that part of the judgment of the Supreme Court which is claimed by the appellant to be erroneous. That part affirming the judgment of the District Court is not in dispute.

See ruling under the old statute when the jurisdiction depended upon the "matter in dispute" exceeding $1,000, in *Nagle* v. *Rutledge*, 100 U. S., 675. See, also, *Wilson* v. *Kiesel*, 164 U. S., 251.

Upon this ground the appeal should be dismissed for want of jurisdiction.

III.

THE LEVY OF A SPECIAL TAX BY THE COUNTY COMMISSIONERS TO PAY JUDGMENTS AGAINST THE COUNTY BASED UPON CLAIMS FOR GENERAL CURRENT EXPENSES OF THE COUNTY IN EXCESS OF THE LIMIT OF TWO AND ONE-HALF ($2\frac{1}{2}$) MILLS FOR COUNTY CURRENT EXPENSES, AND ONE-HALF ($\frac{1}{2}$) OF ONE MILL FOR DEFICIT, WAS EXCESSIVE, UNAUTHORIZED AND ILLEGAL.

It appears that the County Commissioners, in the years 1895, 1896 and 1897, attempted to levy a special tax to pay certain judgments against the county, which levy was in excess of two and one-half ($2\frac{1}{2}$) mills for county current expenses, and one-half ($\frac{1}{2}$) of one mill for deficit, and that the judgments rendered against the county were based upon claims for the current expenses of the county.

The Supreme Court determined that the County Commissioners in making such special levy exceeded their authority and the limit of the law in force at that time.

An examination of the New Mexico statutes then in force will clearly show that the decision is correct.

By an Act of the Territory, approved January 8, 1874, entitled "An Act amending the Revenue Laws

of the Territory of New Mexico" and which amended Section 6 of an Act approved January 31, 1872, and which provided for the assessment of property and the levying of taxes, it was provided in Section 1 as follows:

"That hereafter, all real estate situated in this territory and all personal property of residents of this territory, wherever the same may be, and all other personal property in this territory, on the first day of March of each year, excepting the value of five hundred dollars to each head of a family, resident in this territory, and also all the property excepted by articles two (2), three (3), four (4), five (5), six (6), and seven (7) of section three (3), of this (an) act providing means of revenue for the Territory of New Mexico, *shall be subject to an ad valorem tax of one per centum, upon each dollar of the value thereof,* which shall be assessed and collected as is now, or may hereafter be provided by law for the assessment and collection of taxes; *one-half thereof to be applied solely and exclusively for territorial purposes, one-fourth in like manner for county purposes, and the remaining one-fourth to be in like manner applied to school purposes, in the county where the same is collected.*"

(See Section 1, Chapter II, pages 18 and 19, Laws of New Mexico, 1873-1874.)

The above Act clearly gave authority to levy an ad valorem tax of only one per centum, one-fourth thereof, or two and one-half (2½) mills to be applied to county purposes.

At the session held in 1876 there was passed an Act approved January 13, 1876, entitled "An Act to provide for the establishment and election of County Commissioners." It contains forty-five sections, prescribing the powers and duties of counties and the various

officers thereof, the powers of the county to be exercised by a Board of County Commissioners.

Section 4 provides for suits by and against the county and its officers.

Section 5 provides for service of process in suits against the county.

Section 6 provides for the competency of witnesses and jurors in cases in which the county may be interested.

Section 7, which is relied upon by the county as giving authority to levy a special tax in excess of that authorized for county current expenses, reads:

"When a judgment shall be rendered against any Board of County Commissioners of any county, or against any county officer in an action prosecuted by or against him in his official name where the same shall be paid by the county, *no execution shall issue upon said judgment, but the same shall be levied and paid by tax as other county charges,* and *when so collected shall be paid by the county treasurer* to the person to whom the same shall be adjudged, upon the delivery of a proper voucher therefor."

Section 14 of that Act provides, among other things,

"The Board of County Commissioners shall have power at any session. * * * Fourth, To apportion and order the collection of taxes by law. * * * Tenth, They shall also constitute Boards of Equalization of taxes to hear appeals from the action of the assessors who make the assessments; they shall revise the lists of assessments within their respective counties, and shall correct the same, and shall hear and determine all appeals of assessments that may be brought before them, as required by law, *and in no event shall the said commissioners levy any assessment of taxes exceeding one per cent.*"

(See Chapter I, Laws of New Mexico, 1875-1876, Sec-

tion 7, page 19, Section 14, pages 20 and 21,—being Section 338, page 278 and Section 345, page 282, of the Compiled Laws of New Mexico of 1884.)

It will be seen that the above law, which authorized the County Commissioners under Section 7 thereof to pay a judgment "by tax, *as other county charges,*" contained in Section 14 a limitation that no levy or assessment of taxes should be made in any event exceeding one per cent. Under the laws then in force, the Act of 1874 above quoted, such levy would have to be distributed one-half for territorial purposes, one-fourth for county purposes and one-fourth for school purposes, thus leaving judgments to be paid only out of the taxes levied for county purposes. That Act, however, was not on the subject of revenue, but was passed with reference to counties and county officers.

By an Act approved March 1, 1882, entitled, "An Act Defining a System of Revenue," elaborate provision was made in some one hundred and seventeen sections providing for the assessment of property, equalization and collection of taxes and sale of real estate sold for taxes, also license taxes, suits for collection of taxes and fees. In Section 6 of that Act it was provided:

"There shall be levied and assessed upon the taxable property within this territory in each year the following taxes:

For territorial revenue, one-half of one per cent.

For ordinary county revenue, one-fourth of one per cent.

For maintenance and support of public schools, one-fourth of one per cent." (See Section 6, Chapter LXII, page 111, Laws of New Mexico, 1882.)

This authority and the limitation thereof were in accordance with previous legislation.

The repealing clause of the above chapter (62) being Section 118 thereof, read:

"That the provisions of this Act shall be in full force and effect from and after its passage, and that all laws and parts of laws in conflict herewith are hereby repealed, and that all laws or parts of laws heretofore in force regarding the raising of revenue from taxation or from levies are by this Act hereby repealed."

As Chapter 62 was intended as a revision or codification of the revenue laws the effect upon previous revenue laws would have been the same without any special provision such as Section 118, above.

It was contended, however, in the lower court that Section 118 had the effect of repealing the limitation of 1 per cent. contained in Section 14 of the Act of January 13, 1876, concerning county commissioners. That limitation, however, was not in conflict with any provision of Chapter 62 of the Laws of 1882; moreover, the Act of 1876 was not an act or law relating to the raising of revenue but was rather a law relating to the powers and duties of county officers. If, however, Section 118, above, could be construed as showing an intention to repeal the limitation placed upon the power of county commissioners with reference to levying taxes in Section 14 of the Act of 1876 then it would also have the effect of repealing the provisions of Section 7 of that Act which authorized payment by tax, as other county charges, of the judgments against the county. In any event it would have no relevancy in showing the intention of the legislature in enacting

Section 7 of the law of 1876, if it should appear from the provisions of that law as construed in the light of other laws *then* in force that the legislature did not intend by said Section 7 to authorize the county commissioners to levy a special tax to pay judgments in excess of the levy authorized for county purposes or county current expenses.

At the same session, but by an Act approved earlier, to-wit, February 10, 1882, entitled, "An Act to Provide for Funding the Indebtedness of Counties," provision was made authorizing county commissioners to issue bonds in exchange for warrants, providing for the payment of interest and coupons and the levying of taxes to meet the interest and principal when due, providing for the registering of warrants issued prior to July 1, 1882, and funding the same, and providing for the registering of bonds, and providing for a sinking fund for the payment of bonds.

Section 1 authorized the county commissioners to issue bonds in exchange for the outstanding warrants thereof.

Section 3 provided for the levying of a tax sufficient to meet the amount of interest and principal within the year next succeeding, which was to be kept separate from levies for other county purposes and was payable in money or overdue coupons or overdue bonds.

Section 4 provided that

"at any time after the passage of the Act the holder of any warrants of any county heretofore issued by the county commissioners at any time after the first day of July, 1882, the holder of any warrants of any county issued between the passage of this Act and the first day of July, 1882, amounting to one hundred dol-

lars or more, may apply to the Probate Court of such county for bonds of the kind hereinbefore described in exchange for such warrants and the interest accrued thereon, and it shall thereupon become the duty of the county commissioners to issue bonds as aforesaid and deliver the same to the holder of such warrants, * * * but nothing herein contained shall authorize the funding of any indebtedness accruing after July 1, 1882." (See Chapter LXV, pages 136 and 137, Laws of New Mexico of 1882.)

A similar provision was made in the laws of 1884, Chapter LXI, Sections 1 and 5.

By an Act approved February 19, 1889, entitled "An Act to Authorize the Funding of County Indebtedness and for Other Purposes," county commissioners were authorized to issue certain bonds for the outstanding indebtedness of counties, as evidenced by warrants or bonds of such counties which had accrued or might accrue up to the first day of July, 1889.

Section 2 provided as follows:

"In order to enable the county commissioners *to place the finances of any county upon a cash basis*, such county commissioners are hereby authorized to issue coupon bonds such as are provided for by this Act from time to time after the first day of July, A. D. 1889, to meet the current expenses of the county. Such bonds to be issued at such times and in such quantities as in the judgment of said commissioners may be expedient and the same shall be sold or exchanged for cash at a discount of not more than five per cent. on their par or face value; provided, that no bonds shall be issued or sold by virtue of this section after the first day of January, 1890, and if any should be issued after such date they shall be void, *and no warrant shall be issued after the first day of January, A. D. 1890, unless there be enough money in the county treasury for all county purposes sufficient to meet the same.* And hereafter all taxes annually levied for county purposes shall be ap-

propriated and used exclusively to meet and pay the current expenses of the county for the year succeeding that in which such taxes have been levied to the extent that such taxes have been collected prior to, and during said last mentioned year; provided, that all delinquent taxes of preceding years shall be applied when collected, to pay the current expenses of the county as they may accrue; provided, further, that *if at any time the taxes collected during any year, shall not be sufficient to meet the current expenses of such county for the succeeding year then it shall be lawful at the next annual levy of taxes, for the county commissioners of such county, to make an additional levy not to exceed one-half of one mill on each dollar of taxable property in such county, for the purpose of making up such deficit in the current expense of such county.*"

Section 7 of the same Act makes it the duty of county commissioners issuing bonds under the Act, to levy each year at the time of making the levy of other taxes, a tax sufficient in amount, and no more, to pay the interest on said bond or bonds, warrant or warrants for each year, such tax to be kept separate from the taxes levied for other county purposes, and shall be payable in money, and shall be devoted exclusively to the payment of such interest.

In Section 11 it was provided:

"The provisions of this Act shall not apply to such part of the indebtedness of any county, incurred or created after July 30, A. D. 1886, as was in excess of four per centum of the value of the taxable property within such county, according to the last assessment made previous to the incurring and creating of such indebtedness, which said excess of indebtednes shall be void." (See Chapter 68, Section 2, pages 141, 142; Section 7, page 144, and Section 11, pages 145 and 146, Laws of New Mexico, 1889.)

The above Act was intended to put the counties upon

a cash basis, to forbid the issuance of warrants except as against funds on hand and to authorize an additional levy not to exceed one-half of one mill over the levy authorized for ordinary county purposes or its current expenses, where a deficit should accrue in any year in the meeting of such current expenses of the county.

The foregoing are all of the statutes called to the attention of the lower court and all that need be considered in this case.

It is contended that Section 7, heretofore set out, of the Act of January 13, 1876, entitled "An Act to provide for the establishment and election of county commissioners," gave authority to the county commissioners to levy a special tax to pay judgments in excess of what they were authorized to levy for county current expenses. That, however, was not the intention of the legislature, as can be clearly shown.

Section 7 follows certain provisions respecting suits against counties and county officers. It was simply intended to provide that, when judgment was rendered against the board of county commissioners or some officers, where the same was to be paid by the county, such judgment should not be collected by execution, but that it should be "paid by tax, *as other county charges,*" that is to say, it should be paid out of the taxes levied for the payment of county charges, which would, of course, be by a tax levied at a limited or prescribed rate, as other county charges would be paid by that tax.

That it was not intended by the legislature to authorize the county commissioners to levy a special tax to pay judgments in excess of the amount they were au-

thorized to levy for county charges is apparent not only from the language of Section 7, but also from the limitation contained in Section 14 of the same statute, which then prohibited county commissioners from levying any assessment of taxes exceeding 1 per cent.

Section 7 is of course to be construed in the light of other provisions in the same statute and the legislation then in force.

Under the law of 1874 which was *then* in force county commissioners were authorized to levy an *ad valorem* tax of 1 per cent., one-half thereof to be applied solely for territorial purposes, one-fourth for school purposes, thus leaving only one-fourth in any event for all county purposes, including the payment of judgments against the county.

Authority to levy a special tax to pay judgments was not specifically given and if a tax should have been levied in excess of two and one-half mills for county purposes in order to pay judgments against the county, clearly the limitation contained in Section 14 of that law would have been exceeded and violated. It is not to be assumed, therefore, that the legislature intended to give by implication an authority which would have resulted in exceeding the limit of levy for all taxes prescribed in Section 14 of the same Act. Subsequent laws authorized the funding of certain indebtedness against the county, and provision was made for the payment of interest and a sinking fund, as heretofore stated. A judgment rendered upon the bonds or coupons issued thereunder would, of course, be collected by the levy authorized therein for the payment of such interest coupons or bonds.

The foregoing legislation, however, showed an effort on the part of the legislature to restrict the creation of indebtedness on the part of the county, and the Congressional Act of 1886, known as the Harrison Act (Section 4, Chapter 818, 24 U. S. Stat. at Large, 171), fixed a further limitation on the creation of indebtedness by counties in the territories. By limiting and prescribing the powers of counties to levy taxes the legislature clearly attempted in this manner to place some restriction upon or hinderance to the creation of county indebtedness, so as to relieve as much as possible the burdens of the taxpayers.

A tax is a forced contribution, and the power of subordinate bodies to levy the same has always been strictly construed. Power to levy a tax at a fixed rate is exhausted when the limit of the rate is reached.

In 1 Desty on Taxation, page 257, it is said:

"A statute conferring authority to impose taxes must be strictly construed. A strict construction is fully authorized by the nature and consequences of the proceedings and every charge under the act must be imposed by clear and unambiguous words."

In 1 Desty on Taxation, page 473, it is said:

"The grant of power to subordinate bodies to impose taxes must be strictly construed and doubtful questions as to the extent of the power must be decided against it."

In 2 Desty on Taxation, page 1064, it is said:

"County purposes are such charges in the way of expenditures as are fixed by law upon the counties and appertain to the general administration of county affairs. 'County charges' and 'current expenses' mean substantially the same thing."

If it were permissible, under the general language of

Section 7 of the law of 1876 to levy a tax in excess of that authorized for county purposes and for the deficit in meeting current expenses provided for by the law of 1884, it would be an easy matter for county commissioners to impose very heavy burdens in the way of taxation on taxpayers by extravagant administration of public affairs, and parties contracting with the county commissioners would feel under no restraint whatever, as they could very readily have their claims reduced to judgments and paid by special tax, whereas if the claims were not reduced to judgments they would have to abide payment, as other county charges.

A similar provision in regard to payment of judgments by taxation "as other county charges" has been construed by other courts. A provision of a Kansas statute concerning county commissioners, in identical language with that used in Section 7, was considered by the Supreme Court of Kansas in *Comm'rs of Osborne Co.* v. *Blake*, 25 Kansas, 356. But it was there held that such provision was intended to obviate collection by execution and merely to provide that the judgment should be collected by means of a tax in the same manner as other county charges are collected, and that other county charges when collected by means of a tax can be collected only by means of a limited tax which was prescribed in the authority to levy taxes for such purposes.

It was further decided in that case that a judgment rendered upon a claim against a county was simply one of the items which the board of commissioners take into consideration in levying a tax for county charges or for county expenses or for current expenses; and that a judgment rendered upon a claim for county

charges could only be paid out of a tax which the commissioners were authorized to levy to pay such charges.

This court, in the case of *Supervisors* v. *United States*, 18 Wall., 71, construing a statute of Iowa which provided that in case of judgment against a county if the municipality issue no scrip or evidence of debt to cover the same "a tax must be levied as early as practicable, sufficient to pay off the judgment with interest and costs," held, following the decisions of the state court, that this gave no authority to levy a special tax for that purpose, nor did it grant a new power to levy a tax for the payment of ordinary county indebtedness, even though the indebtedness had been reduced to judgment.

A provision in the Wyoming statutes concerning judgments against counties, similar to that of section 7 of the law of 1876, was considered by the Supreme Court of that state, in *Grand Island & N. W. R. R.* v. *Baker*, 45 Pac., 494, and on pages 502 and 503 the court held that such provision gave no authority to levy a special tax, but that such judgments were to be paid as other county charges and out of the tax authorized to be levied for such purposes only.

In *State ex rel. Young* v. *Royse et al.*, 91 N. W., 559, the Supreme Court of Nebraska held that in determining the power of a city to levy taxes to pay judgments against the city, the judgments partake of the character and are governed by the same rules of limitation as the original claims upon which they are based.

In *C. & A. R. R. Co.* v. *People*, 177 Illinois, 91, it was held that upon making the annual tax levy for corporate purposes, including the payment of a judgment

not on a bonded debt, the other expenses must be abated, if necessary, to bring the entire levy within the statutory limitation.

See, also,

27 Am. and Eng. Encyc. of Law, 2nd Ed., page 877, note 4, and page 878.

Corbett et al. v. *City of Portland et al.*, 48 Pac., 428 (Supreme Court of Oregon).

It was contended in the lower court that no inquiry could be made into the nature of the claims upon which the judgments were based; that the judgments were conclusive. No doubt they are conclusive, so far as their validity is concerned, but an inquiry into the nature of the claim upon which the judgment was based is not an attack upon the judgment, especially when the inquiry raises a question as to whether a special tax might be levied, or not, to pay such judgment. If the judgment be founded upon a bond of the county or an interest coupon issued under authority of law the holder thereof may compel the levying of a tax which was authorized by the statute authorizing the issue of the bonds, as the right to such tax becomes a part of the contract. There the court would inquire into the nature of the claim upon which the judgment was rendered. A judgment is an adjudication of the validity of the claim, but the claim is set out in the pleadings and is as much a part of the record as the judgment itself.

In 1 Freeman on Judgments, Section 244, it is stated that:

"While as a general rule the cause of action is merged in the judgment yet all inquiry into the nature of the cause of action is not barred by the judgment.

In order to determine whether the judgment is of such a character as to enable it to be enforced in a particular manner inquiry may be made as to the nature of the claim upon which it was founded."

See also *Louisiana* v. *Mayor of New Orleans*, 109 U. S., 285, in which it was held that a judgment against a municipality founded upon a tort did not come within the protecting clause of the Federal Constitution prohibiting the states from passing laws impairing the obligations of contracts.

It was also contended in the lower court that some of the claims upon which these judgments were rendered were of the sort made compulsory by operation of law and were of an extraordinary nature. Some of the claims merged in these judgments were for the payment of election and jail expenses, salaries and fees to county officers. They were nevertheless current or ordinary county expenses and their legal status was not changed although such claims were merged into judgments. Notwithstanding the necessity to meet such charges the authority to levy taxes to pay the same could not be exceeded.

Lake County v. *Rollins*, 130 U. S., 662, 669, overruling the views entertained by the court below in 34 Fed., 845.

We respectfully submit the judgment of the Supreme Court of the Territory should be affirmed.

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Of Counsel.

Supreme Court of the United States.

No. 182.—October Term, 1905.

The Territory of New Mexico, Appellant, *vs.* The Atchison, Topeka and Santa Fe Railway Company, The Rio Grande, Mexico and Pacific Railroad Company, and The Silver City, Deming and Pacific Railroad Company.	Appeal from the Supreme Court of the Territory of New Mexico.

[March 12, 1906.]

Mr. Chief Justice Fuller delivered the opinion of the Court:

The Territory of New Mexico commenced three separate actions against appellees, respectively, in the District Court of Grant County, New Mexico, to recover taxes alleged to be due on a levy to pay certain judgments against the county, including a particular item of $276.21, arising from the increase of the valuation of the property of the railroad companies. The aggregate amount claimed was $8,646.49 with interest at the rate of twenty-five per cent per annum. The cases were consolidated and submitted to the District Court on an agreed statement of facts with exhibits attached, a jury being waived, and resulted in a judgment, October 9, 1902, for $5,156.71 with interest at six per cent per annum. This included the $276.21 with interest. Appellees sued out writs of error from the Supreme Court of the Territory. No cross writ of error was brought and no cross errors were assigned. In the Supreme Court the item of $276.21 with interest was not contested. February 26, 1903, the Supreme Court announced its conclusion that the judgment be reversed, but as the item of $276.21 was not contested, rendered judgment for that amount, thereby rejecting the sum of $4,880.50 of the judgment below, that sum with interest at six per cent amounting to less than five thousand dollars on that date. 72 Pac. Rep. 14. From the judgment so rendered the Territory prosecuted an appeal to this court, under the act of Congress in that behalf, January 17, 1905, and prayed in its assignment of errors that the judgment of the Supreme Court be reversed and set aside, and the cause be "remanded to said Supreme Court, with directions to affirm the judgment of the District Court of Grant County." The appeal was heard in this court on January 26, 1906, and on that day appellant filed an additional assignment of errors to the effect that the Supreme Court of New Mexico erred in failing to hold that appellant was entitled to interest at the rate of twenty-five

per cent per annum from October 9, 1902. But the judgment of the District Court gave interest at six per cent, and, as before stated, the Territory did not complain of that judgment as rendered.

By the act of March 3, 1885, (23 Stat. 443, c. 355,) no appeal or writ of error could be allowed from any judgment or decree of the Territorial Supreme Courts, with certain exceptions not material here, "unless the matter in dispute, exclusive of costs, shall exceed the sum of five thousand dollars." The matter in dispute here was that part of the judgment of the District Court which was disallowed by the Supreme Court and that was less than five thousand dollars.

Appeal dismissed.

True copy.

Test:

Clerk Supreme Court, U. S.